

Buffalo County Minutes

Committee/Board: Board of Adjustment

Date of Meeting: September 5, 2018

Electronic and Hardcopy Filing Date: October 31, 2018

The hearing was called to order at 10:00 a.m. by Chairman, Dale Klopp. Barry Drazkowski, Ronald Kazmierczak, Dale Klopp were all present.

Others present for all or part of the public meeting include Mike Owecke; Zoning Administrator, Keith Bollinger, Zoning Specialist, Julie Lindstrom; Administrative Assistant in the Zoning Department. Brent Hohmann, applicant, Autumn Brown, resident of applicant property, Leonard Litscher, Chairman of the Town of Cross, Town Board. Others may have been in attendance.

Public Notice was read aloud.

Item #3 on the agenda was reviewed by Mr. Klopp.

Mr. Owecke asked that the Board of Adjustment members read at this time, an e-mail correspondence he received from the DNR Shoreland, yesterday, 9/4 in regard to this variance hearing.

Mr. Kazmierczak questioned and learned that the applicant did not see the DNR Shoreland e-mail until now as well.

Minutes are summarized as follows: (draft only until officially approved by the Board of Adjustment)

Variance Request #2018-3 Brent Hohmann.

Mr. Hohmann stated that he wants to build a 30 foot by 40 foot shed. He currently has a little hobby farm and will use the shed to hold two steers, hay and grain for the winter months. He explained that the location was selected for several reasons; 1) Access off the Township road. He lives at the end of the Township road; 2) Landscape around their property if it is up by the road, it drops down into the creek bottoms and would like to keep it up towards the road; 3) Didn't want it closer to the existing buildings or their house. He continued by saying that there is actually a steeper gully between their house and the site now; the site selected for the structure make it easier for snow removal, turn around and access to it with the trailers. When we did this, we were kind of waiting for the Township to build their road because of the bridge. It was in the plan for a few years. So we finally got to it this year. The Town raised that road when they did their road repair and caused us to put more fill in than we would have had to when we first looked at the project; the culvert came out a little bit. When we were ready to start the project, I talked with Mr. Litscher and to the excavator. We talked about the options for setback to centerline of the Town Road. I know that and understood, and we decided there is no problem putting it there. Putting it somewhere else it is hard, but basically where my house is, when they built my house, they had to raise it up and put it back farther. There are a few of them (*do not know what Mr. Hohmann is referring to when he says a few*) below my house, and that all comes down to a low spot, which is about a 4 foot dike along the woods and actually over time, there is a drain that goes through the dike and down into the creek, that has been filling in, so everything kinda runs down into that so it goes behind my place, so if I put it anywhere else, I don't think it would be a lot more work, a lot more construction. I would have to build a road to it. I talked to the neighbors. Three of my neighbors I have land next too, none of them have any issues, they support it. As of one neighbor, when Township did the road, they cut a bank on the other side where I want to build; they cut it deeper, and back farther into the hill. I got permission from the neighbor to use some of his fill, so we brought it across the road. It helped the Township.

Ms. Brown stated that they decided to use the same contractor to do their work as the Town of Cross did to complete the road/culvert repair. The contractor knew how much fill they would need. She continued by saying that originally when we moved to that house 4 years ago, we moved at the end of summer and the Township said at that time that (there are 2 bridges on that road) the bridges would be replaced that fall. Rather than waiting for the bridges to get replaced, we decided to start on our project because we had a little money saved and decided not to wait for the bridge repair to get completed. It was all planned out what we were going to do and around that same time there was a notice that the culverts were going to be put in, then, the next issue was the culvert closest to us, is bigger than what was originally thought.

Mr. Hohmann continued by saying that the original culvert was supposed to be flattened on the bottom and just a regular round culvert was 2 feet higher. *Could not understand the audio at this time.* This way they would have creek access on the other side, if I move it, I will need a water source for the cattle. The wind comes from the valley from the west and that would not (*could not understand the audio at this time*) my access to it. I would move it more where it is exposed up above. The neighbor has to put in snow fence, because it runs along the road (*did not understand the audio at this time*) So if I move it, I want to be sure the cattle do not have access to the dike, do not want them walking all over the dike. This ended Mr. Hohman's presentation.

Public Comments: Mr. Litscher, Town of Cross, Chairman. The bridges near this site were condemned, so we had to replace them; we started with two, 84 inch culverts that were arched, when we had all that flood damage the last couple years, the culverts did go out, but the roads went out twice, so the Town Board, made decision to put the 2 – 84" culverts side by side and now we are short a culvert for the other bridge. Mr. Litscher explained how they repaired the second bridge and the impact was that the road was raised 4 feet compared to where the initial bridge was. When Mr. Hohmann came to the Town Board with the Variance request, it was discussed and all the Board members are agreeable with the setback from the road. The variance does not affect the town road at all. I don't know where DNR comes up with the stream being navigable. When we had the DNR gal back there, we were issued a permit, the first culvert that came off Engel road we needed a permit there and I worked with the Highway Commissioner there. When we looked at the other one, DNR told us that was not navigable and we would not need a permit to put that culvert in and we never had a permit for that culvert. At that time, they said it was not navigable. Now the way that Mr. Hohmann went and did that, I don't see a problem with that stream. He has it completely ripped below that culvert on his own funds, so he does not have an erosion problem up towards the building. I know the DNR has some questions about being really close to the streambank, but I still don't see why there should be a problem after it is seeded down, otherwise I don't know. I am more in favor of letting Mr. Hohmann go ahead and put that building there. We always welcome new structures in our Township.

- Mr. Klopp – It is two different streams, the one before that was not navigable, is that like a dry run.
- Mr. Litscher – That was a dry run. The only reason it isn't a dry run is because of the water table.
- Mr. Klopp – I am sure rainfalls for 2016, 2017, & 2018 are the reason why it is not a dry run.
- Mr. Litscher – There are springs coming from the back that produce the water.
- Mr. Klopp – The DNR staff there was there (Karen & Dave Hon {wasn't here in August}). I was thinking that maybe there was a little water coming down through there, when he was there, that is why it was considered a navigable stream.

Mr. Klopp asked Mr. Litscher and Mr. Hohmann to approach the BOA to point out some things on the aerial photo.

The following were identified in the photo (*there was not enough explanation in the audio to provide information in these minutes to where the items were located*): location of the berm, location of the 2 culvert repairs, the initial navigable stream, location of driveway permits and Mr. Hohmanns property lines.

- Mr. Kazmierczak – (*pointed to 2 locations*) Why can't it be sited at either of these locations, other than you said it was farther and you have problems with the snow (*not know exactly where Mr. Kazmierczak was pointing on the map*).

Mr. Hohmann pointed out the location of the beginning and ending of a dike in one site suggested as a possible site option and pointed out the location of a little spring house; also pointed out the location of a tube where the water is supposed to go through.

- Mr. Kazmierczak – A dam and a terrace.
- Mr. Hohmann – I am not familiar what is back there, (*pointing to a location on the photo, not detailed enough to explain in text in these minutes and Mr. Hohmann continues*). It does come through here and pool up a little here where all the erosion is coming off and filling this up before it drains out.
- Mr. Kazmierczak – What about in here (*suggesting 2 locations*).
- Mr. Hohmann – (*pointed to an area*) I do not own this field, the property goes to this corner, up this way.
- Mr. Drazkowski – So you go up along the waterway.
- Mr. Hohmann – Yes

Mr. Kazmierczak asked Mr. Owecki to come look at the photo as well.

- Mr. Kazmierczak – That is not what your parcel's are showing. (*Parcels were not actually in the right location on the photography*)
- Mr. Hohmann – (*Pointing to areas on the aerial photography*) Right behind my house it drops down quite a bit and down this way and back up where the building site was. Here is a low spot and from here probably 15 feet behind the house, it drops down.
- Mr. Kazmierczak – When you bought the place was it surveyed.
- Mr. Hohmann – Yes

Mr. Drazkowski questioned several location on the map for options for locations for the structure; not identified specifically in the audio.

- Mr. Hohmann – Right around the house it drops down and this (*not knowing what he is pointing to on the photo*) is all low.
- Mr. Drazkowski – But adjacent to the driveway.
- Mr. Kazmierczak – Back in here, I don't know where your septic is.

Mr. Hohmann pointed out the location of the septic in the photo. Mr. Kazmierczak pointed to a location on the photo and learned that is where the garden is.

- Mr. Kazmierczak – No reason it can't go here.
- Mr. Hohmann – I would be getting into that dike and the water pool. I would like to have creek access, so I would have water for the cattle.

- Mr. Kazmierczak – That could be a problem. I don't think we encourage creek access for cattle, do we? As a matter of fact a lot of people would frown on creek access. They build fences to keep cattle out of the creeks.
- Mr. Drazkowski – Where are your cattle? Are they running in this area?
- Ms. Brown – I would also like to add that the cattle can go in the woods down below. They have some shade if they want. It would be a complete mud hole, if it down below away from our house a little bit and they can come to higher ground when they need to.

Mr. Drazkowski asked for photos and Mr. Owecke stated that his photos are of the structure site. Mr. Kazmierczak questioned whether it was between two streams as the aerial photo shows. Mr. Owecke responded by saying the more west blue line is not a stream it is a low spot. There is no waterway through there.

- Mr. Drazkowski – There is water that runs when the Town re-did this (*do not know where he is pointing in the photo*). This water runs down along this side of the road.
- Mr. Owecke – So the water diverted on this side of the road.
- Mr. Hohmann – It use to come across the road, but we have enough berm in there.
- Mr. Drazkowski – So given the amount of fill that you put in, you talked about how you had to raise it with the road, so this building, you have the road and it slopes down, you build this pad up, the slope on that is pretty steep, how do the cattle get in and out of the building.
- Mr. Hohmann – Well since it is so steep, I would probably have them come up and around and like I said they would only be in there; they would not be in there during the summer. It would basically be a couple winter months and at that point. I would buy the cattle in the spring and by March the last couple months, probably wouldn't be outside, I would finish them out and be done with them and get new ones. As I said earlier, it is great to have access to the road. The Township road there, and I can get a trailer in there. Right across from where we want to build there is an approach that goes into the woods, so it is nice to pull in there and back up to the shed or a turn-around for the snow plow. It is what we were looking at also.
- Mr. Klopp – This is the berm you were talking about (*pointing on the aerial photo*). It does not affect your house as far as if we get a lot of water will it come over towards your house.
- Mr. Hohmann – No. Because my house is built up. It does pool up there (*pointing on the aerial photo*) and then go down the culvert.
- Mr. Drazkowski – I am familiar with your site. Where the Town put the culvert, all that rock below the culvert. Did you put that rock in.
- Mr. Hohmann – Whatever is off the right-of-way I put in.
- Mr. Drazkowski - Where the rock comes up, it looks like there is an access road and the fill goes up another 5 feet or so to the top of the building and that slope, I know, Mr. Owecke in your recommendations, you are talking a 3:1, that already looks like it is less than that. It is pretty steep, right there and that is just loose dirt.
- Mr. Hohmann – Right now, yes. Ideally, we were going to put a little access road on that and this all came about, so I haven't done anything there yet, so I can level it off down to the riprap or think about putting a concrete retaining wall, which would be about 3 feet.
- Mr. Drazkowski – Right now there is the road, and a steep piece where the slope comes down. If you had to do a retaining wall, that is where you would do it. It would help with erosion, rather than sloping it all down.
- Mr. Hohmann – You cut that towards where you put the riprap in and then grade it as well. They put riprap past where I would even build. I made sure they went past the building site.

- Mr. Drazkowski – Mr. Owecke, DNR navigability determination. It said you went out with them. When I look at this, there is a lot of runoff, so I couldn't tell any base flow. The base flow navigability determination is what you need to pull the canoe.
- Mr. Kazmierczak – Actually, it connects to another navigable water. That is another issue. They look at the ordinary high water mark and it is based on vegetation, channel width and things like that to determine what the ordinary high water mark is and you look at water depth of boats, the court decision is you have to be able to float a boat in the least draft possible. It could be a canoe, kayak, It could be anything. The difference between a navigability determination and navigability fact, usually it is when they go to court they will actually throw anything in the stream to see if it will float, it is navigable. It is also at any point during the year. It can be the period with the highest runoff. It is not a sustained flow, which is where people confuse it.
- Mr. Drazkowski – So when a perennial stream can be navigable.
- Mr. Kazmierczak – A dry run is usually determined to be navigable.
- Mr. Klopp – So what you are saying is that 3 weeks out of 12.
- Mr. Kazmierczak – If it can float a boat, it is navigable.
- Mr. Klopp – So what about the 2 years after that if you can't float a boat.
- Mr. Kazmierczak – Once the determination of navigability has been made, it is not just floating the boat things, the depth, the channel, and the ordinary highwater mark What the ordinary high water mark is the normal high water area. It is not the flood high area. We can go out in roadside ditches right now and they don't determine to be navigable.
- Mr. Owecke – Another factor they look at is the size of the watershed. It is 300 acres or more. This one was around 500 acres.
- Ms. Brown – What is around 500.
- Mr. Kazmierczak – 500 acres is the size of the watershed that contributes water to this stream, the area above it, where water comes to the stream.
- Mr. Drazkowski – (*questioned the DNR determination letter*) The criteria in the DNR determination letter are the criteria we are supposed to use in assessing a variance and I would actually really like to hear you address those three things and the comments made from the DNR because I have some of the same concerns when I looked at it, but they are based on my perception of what you own, what your parcel were, which I believe is not correct. Our maps don't seem to jive with where you say your property line is. In my mind, there is a field over there. There are a couple places it could go and I think that is the point also made in the DNR letter, so those might not be options for you, but if you could speak to the unique physical limitations and those three components, and there is a point made by the DNR in each of those paragraphs, that would help me.
- Mr. Hohmann – Unique physical limitations. We picked that spot because there would be less impact than others we knew we were going to be steep, we got the professional excavator out there and took steps to pick that site. We picked that site, didn't seem to have any issues with it. At that time we took steps to protect runoff with riprapping, put it where you can. Level spot will help out and once I get it seeded, put a retaining wall in, it will be protected from that way. (*could not understand audio at this time*) the potential for everything going down to the creek.
- Mr. Kazmierczak – What about the statement, there is also a vacant agricultural parcel adjacent that you own where it could be located. I think that is one of the questions you were asking, addressing Mr. Drazkowski. That is really where we are getting confused. Our maps showing what you own and what you actually own over there, 20 acres?
- Mr. Hohmann – Across my road, there is a little sliver of a piece where my well is. Compression tank and stuff is there. That would be an issue. I don't know if I can move that or not. The same thing that is (*not sure what was said from the audio at this time*) from that it goes up the hill and there it would be more exposed the snow comes up that valley and across that field.

A discussion was held regarding Mr. Hohmann's property lines when comparing them to the plat map and the aerial photo provided to the Board of Adjustment. Mr. Bollinger explained from the plat book to the aerial photo what property is owned by Mr. Hohmann. There are three separate parcels that make up the 20 acres owned by Mr. Hohmann.

- Mr. Hohmann – Across the road, the utility line is there, and underground lines that feed my house and the neighbors house. Even from my road going up, that field is not very good.
- Mr. Drazkowski – The location where you currently have the site, but going to the west towards your house, as you get closer to your house, in that area or just downslope, I look at it and it seem like it would be less fill.
- Mr. Hohmann – Actually, that would be more fill, before the Township did above the road, the culvert created, it ran over the high road and kind of down there. That is probably the lowest spot. From my house it goes down and then it kind of comes up a little.
- Mr. Drazkowski – So that was the drainage that came off the hill.
- Mr. Hohmann – Right. Where I mentioned fill is actually above the road.
- Mr. Drazkowski – I guess what we are struggling with, it seems like there are viable alternative sites you could put it. I can see the value of putting it where you selected, the logistics and that kind of thing, but that is what we are struggling with.
- Ms. Brown – I currently have goats and I have them above our driveway and I don't want to mix the two animals together.

At this time the BOA reviewed the property owned by the applicant and discussed options of other locations to build the structure.

- Mr. Drazkowski – Given the amount of fill you need regardless, there are some options and now that the waterway has been diverted, there is no flow through here; that flow has been diverted over here, so this dries out. They took out the culvert that goes past here, so now there is a berm and there is a big culvert down here. There is one that goes under the road and one that comes and dumps here. There is a turn-around or four-wheeler trail. There is actually what these are; four-wheeler trail, pointing to the aerial photo.
- Ms. Brown – I want to be proud of where I live. I want it to be beautiful and to have people come back there and see it gorgeous, the same way that I see it. I don't see how putting the structure down below is going to be a pit all the time, and closer to the house. It needs to be accessible. We are young now and we are not always going to be young.
- Mr. Kazmierczak – I understand that and I think we all understand the pride you take in your property, it shows. The problem we have is what court decided we can and can't do to, so we are trying to figure out a way to take your concerns and our concerns and blend them together and come up with something you can live with and be proud of and we can legally sustain. If we end up getting sued and that has happened to this board in the past, we have been sustained by the court system in the past because we are very careful how we do this, but we try to make it a win, win, if we can. I am glad to see the pride in your property. I am sure it shows.

Mr. Kazmierczak asked to see photos at this time. Photo presentation as follows (*there was not enough explanation of the contents in the photos to be able to tell exactly what was being discussed in each photo; there were discussions during the photo presentation that are not included in these minutes because the audio was not clear enough to transcribe what was being said*): Mr. Owecke: looking directly across Mustang Road; looking due north at the earth pad for the proposed structure; Mr. Klopp: Where does the

electric pole in the back run from and does that run up to your house. Mr. Hohmann: *(could not hear Mr. Hohmann's response from the audio clearly)*. Mr. Klopp: The service to your house is underground; Mr. Hohmann responded yes; Mr. Owecke: The slope that Mr. Draskowski is referring to, access road to the rear of the property, area where the retaining wall could be constructed to hold the slope 3:1. The stream is right here.; Mr. Klopp: the access road has that always been there. Mr. Hohmann: *(could not hear Mr. Hohmann's comment clearly from the audio)*. Mr. Owecke: from the same spot looking up Mustang Road. This is all Mustang Road looking up. Look at the angle up here. This is the first farmstead on Mustang and then it turns. This is the new culvert. These are just driveway culverts that were installed. This is kind of in the same place looking the other direction. The culverts put in. That is a turn around there also. Standing on Mustang Road looking at the stream, location of the riprap. The pad for structure construction. Mr. Klopp: that field off to the left. That is not yours. Left of your buildings; Mr. Owecke – no. Mr. Klopp: Where the fill is and going towards your house, I see some pine trees, are you 20 feet from the stream; Mr. Owecke: Right. Mr. Klopp: A person would be able to add more fill going towards those trees. I see two, I don't know how many more there are. Mr. Hohmann: *made a comment about the previous owner but the detail was not clear in the audio*; Ms. Brown: What you don't see where the dark area, there use to be a culvert across the driveway that is why it is so low there; Mr. Kazmierczak: Now they bermed it and ran the other side; Ms. Brown: but that is the reason it is so low. The trees planted along the gully where the culvert use to be; Mr. Draskowski: I am assuming the area from there up to your driveway, that slope looks less than the amount of fill that is over where the earthen pad is right now; Ms. Brown: that is where I was saying, I wanted the ground to come up higher, so that they still could go on high ground; Mr. Draskowski: So that area right in here *(not knowing where he is pointing on the photo)* as a building site; Ms. Brown: Now it is the lowest point; Mr. Klopp: To the left of the driveway going in, that would be your septic; Ms. Brown: Correct. *(There was discussion at this time that was not clear from the audio)*. Mr. Draskowski: we are seeing the fill off to the right; Ms. Brown: Correct; Mr. Klopp: When you come straight across your driveway it would be about even; Mr. Hohmann: when they did the town road and put the culvert in they cut it just about pretty level, so they raised the road quite a bit; Ms. Brown: It is higher than our driveway, but level with the road; Mr. Draskowski: however it did divert the water that was coming across your property; Ms. Brown: What you don't see is to the right, they cut all that out; Mr. Klopp: so the grass that you see near the pasture, is that yours; Ms. Brown: that power pole and down is our pasture. You can actually see on the right hand side of the pole that property *(could not hear clearly the rest of her sentence from the audio)*. *There was additional discussion with the photo presentation that was not clear from the audio and not included in these minutes.*

After photo presentation.

- Mr. Draskowski – So one of the responsibilities when I got on the Board of Adjustment it is important that the board members talked about the application, so we are all aware of the information available and discuss it with each other, so what I am conflicted with, is I look at our legal charge and the availability of alternative sites. The determination of the navigable waterway has obviously changed from original, when the town did their road work, it was not navigable and now it has been determined to be navigable, so I am conflicted with balancing the human reality of you living there, you have this site, I understand why it is there, you had all the information, it would probably be over 20 feet. I understand our responsibility, what the DNR has said and I am conflicted. I am having a hard time and I need some discussion about this.
- Mr. Kazmierczak – I guess I don't disagree with you Mr. Draskowski, at all, and one of the things, if you read through the information that Mr. Owecke gave us, when it is talking about unnecessary hardship, the fact that it has been self-imposed, is not a factor that we can consider. I agree with you. I understand and I respect the job that has been done and your home looks beautiful. The issues we have here, and while it may be sentimental on those trees, I am sorry, but trees grow and trees can be cut. There is a self-imposition of difficulty here that needs to be looked at. The fact that the fill has

been done before anything was done with zoning office here is also an issue. That was probably the biggest problem, had you contacted the zoning office ahead of time, it would have been over 20 feet and back another 17 feet and we wouldn't be having this discussion right now. Part of that is just lack of knowledge. I understand that not everybody thinks of these kinds of things, but it, again, there are options there and it is self-imposed the difficulties that we are dealing with right now. Yes, there are some limitations, but there are also some options available that need to be looked at as well.

- Mr. Hohmann – In hindsight, I didn't know, I have never had to get a permit and then who do I talk to; I honestly didn't know. David Hon was out there, so I called and asked some questions and talked to him and said it was a navigable creek and I asked him what harm that site was going to do there, so I am asking, what is the harm of building at that site.
- Mr. Drazkowski – I think that is fair, so when I look at the site, from the creek side, I think of a few cows and I have a 30 foot by 40 foot shed on a site very similar to yours, although it is a dry wash, it is not a navigable stream and I have had a few cows in there and maybe a few horses. When I look at the creek facing side, what goes through my mind, is there any runoff from the building that could bring manure down into the creek or on the north slope, where it goes down towards Engel Road, if your cows are going up and down that, you talked about the impact of cattle moving up and down a slope if you only have a couple foot of soil and it is sand, that traffic, could erode with the rainfalls we have been having and all of a sudden that sand is washing out, which would destabilize the north slope. How you manage the movement of cows in and out of the shed, how the manure and runoff from the shed site into the creek. Those things in my mind are risks and how the slopes around the shed are managed to stabilize the black soil, so it doesn't erode away, because I think that is a risk on all three sides, especially if you have animals, going up and down and across it. Those are some concerns I have and I don't know if you have plans on how to address that.
- Mr. Hohmann – On the creek side you want them to be allowed to go up there, (*Mr. Hohmann's comment was not clear on the audio and therefore it is not included in these minutes*).
- Mr. Kazmierczak – Mr. Hohmann, you said you grew up on a farm, you know that dirt, if they keep using the same path, it is going to get pounded and eroded, you know that as much as I do. The other thing, I don't know if it was mentioned; the access of the creek, which is something the county is working hard and NRCS is working real hard to discourage keeping cattle in creeks; they are fencing them out, that would be a negative as well. I will be real honest with you, that is not something that we would make a final decision based upon, but it is a negative associated with that. If you moved it over and back the cattle could still have access to the creek. I understand that. I am just saying that the fact that you are doing that to provide that access, is not necessarily a good thing. I want you to understand that as well.
- Mr. Hohmann – I do understand that; if I go over 20 feet, I can still have the cattle come in and out, It would be a bare minimum, just for that reason.
- Mr. Kazmierczak – the other option is coming off the road, if you moved it over, I think it is to the west, you could access it from your driveway, you have an area there where you could make a turnaround as well. There are ways to do this, what I am saying is that there are other options as well to make it happen. I understand, the convenience issue, it is nice having that neighbors driveway across the road from you and all those kinds of things, totally understand, it totally makes sense, but the problem is there are other options available.
- Mr. Hohmann – I guess, we have a financial budget and it is twice what I thought it would cost. I have \$20,000 already for the pad and if I move it over 20 feet, I have an estimate of \$12,000. I can't afford that.
- Mr. Kazmierczak – I understand that, I put a shed on my property and needed five feet of fill. Living in Buffalo County, nothing is level here, you know that.

- Ms. Brown – I know that you talk about the point closest to the creek where we put the riprap, and originally we didn't decide whether it would be the road access or not, however when they cut the road back in there, we did talk about it and we decided since we spend so much money on the fill already, that might be a great place for us to put our corral. We could drive in and out, and when we needed to load something, we would have that as a little parcel that is available. It is not something that the cattle would be on all the time. That is the first part, then you also mention the livestock and what that does, I understand, I get it, however, a benefit of us moving this forward, we will be able to grade some of that a little bit in the back and that will help us. There are only two head of cattle. We have all been on a farm, we all know what it is like, however, you don't know what is going to happen from one year to the next. I can really tell you that it is not going to be that big of a deal. We don't know until we have done it. I just feel so strongly that we are able to make payments to this in the future, but we talked that is the way to do it, we don't know until we do it. Had we done it a month ago, we wouldn't be sitting here, because a month ago it was not a navigable creek.
- Mr. Kazmierczak – You still had the setbacks, you would still be sitting here.
- Ms. Brown – I was under the impression that we went through the Town.
- Mr. Kazmierczak – No, you still needed a variance from the road setback and from the property line setback for a cattle feedlot.
- Ms. Brown – But it would be for a different reason.
- Mr. Kazmierczak – Correct.
- Ms. Brown – Are there a lot of variances. Is it common?
- Mr. Owecke – People in your situation, want to build something, they come in beforehand and we tell them where they can build legally and they do not have to go through this. No, there are not a lot of variances. Mr. Chair, I asked David Hon about the permitting for the Town's project and his response, quote, "the transportation program permitted both crossings after-the-fact, the crossings were installed after a flood event and permitted by DNR as the permits were required and issued, which means that both crossing streams were considered navigable".
- Mr. Kazmierczak – so they also had permits and that was prior to this hearing.
- Ms. Brown – For one, it was only for one crossing.
- Mr. Klopp – But Mr. Hon said both of them.
- Mr. Litscher – You should see a permit. The DNR does not even give you a permit to post, so how long do you wait. They issue a permit, but we don't see any paperwork on it and to this day we haven't. I went back to Bob Platteter to be sure we got permits and was told, don't worry about it has been taken care of.
- Mr. Klopp – It is funny that they would not send the paperwork out to you.
- Mr. Litscher – I asked before when we had to get permits.
- Mr. Owecke – They do pretty much everything electronically. They send an email. Here is your permit.
- Mr. Klopp – Maybe your town clerk received it. There is a lot of online communication.
- Mr. Klopp – I have and maybe it is just an error as far as cattle confinement shed, what I feel, the cattle don't get out of the shed, whatsoever. This is not your case. You want them to go in and out.
- Mr. Hohmann – That depends on; in the summer they are outside, we want them to have access to the building. The only time is, when we want to put them in there for a couple months of winter, January, February and March, leave them in there and finish them out in there. They are on pasture again until late fall when I put them back in the shed for winter.
- Mr. Klopp – You are saying only 2 animals you would have at a time.
- Mr. Hohmann – that is all we want, that is all the pasture. It is not going to be a feedlot.
- Mr. Klopp – Do you have any intentions of cementing the floor of the building. You mentioned a retaining wall. 30 by 40 feet, so I assume that retaining wall would be kind of a spendy project also.

- Mr. Hohmann – I would do it with concrete blocks.
- Mr. Kazmierczak – plus you would have to put a footing down.
- Mr. Hohmann – or just grade it off to the riprap. I don't know which option would be better.
- Mr. Klopp – the three trees that I said you would have to move, are they probably fifteen feet in height.
- Mr. Hohmann – Yah.

Mr. Klopp questioned if either of the other Board members had any questions for the applicant. Mr. Kazmierczak stated no.

- Mr. Drazkowski – I think the thing that I am having the hard time with is we have zoning, we have rules, you talked about, if you would have known, and you did interact with the Town, and it seems like, somehow we need people to be better aware and maybe it is through the Town. Hey you have an issue with a setback here, because I feel like we sit here and we listen to valid, human, issues, which none of us would argue with, but we also have the legal requirement that says if there are alternate sites, it doesn't matter if you have a financial commitment, it is not a criteria, and you know, because it was started and now it comes after-the-fact, gee whiz, hate to put you in a certain situation, but it is hard for us and that makes me feel concerned, but it also makes me question, why don't we have better awareness why the county and the Town need to have a better foot forward in helping out citizens know what they can and can't do, so you, the applicant don't get stuck in this situation and that is what is bothering me right now. You shouldn't be sitting here going through this. If you would have known, you probably would not even had to come in.
- Mr. Hohmann – I have a couple questions here. Do you need a permit to move dirt on your land?
- Mr. Klopp – If it is an acre or more.
- Mr. Owecke – No, anything over 10,000 sq. feet requires a permit.
- Mr. Hohmann – We had talked with a couple excavators and we came up with the same thing that you do not need a permit to move dirt on your own land.
- Mr. Owecke – You do not know how many times I have heard that. A contractor wants to work while they are there, rather than wait for a landowner to get a permit. They want to complete the work and go on to another job. A contractor does not have the responsibility to know whether a landowner needs a permit or not.

Mr. Bollinger briefly explained the difference between a Zoning permit and a building permit and stated that people may have to better understand the difference between the two.

Mr. Klopp stated that some excavators know when a permit needs to be acquired for work they are doing on someone's property, but it is still up to the landowner to be sure they have the permits they need.

- Mr. Kazmierczak – Maybe we need to work with the excavators as well (*when it comes to zoning in the county*).
- Mr. Hohmann – Honestly, I didn't know.
- Mr. Kazmierczak – I don't think anyone doesn't believe you here at the table. We all believe you would have done it right. Unfortunately, we are caught in the middle on this situation and you are caught in the middle.

Mr. Owecke stated the only correspondence was the neighbor that had no issue with the livestock structure being closer than 200 feet to his property line; there was no correspondence in opposition to the variance.

It was the consensus of the Board; a site visit was not necessary.

- Mr. Drazkowski – I am prepared to make a motion and before I do, I want to qualify my motion with a couple of comments. I feel we have an applicant, one it is the part of a citizens responsibility to know what our laws are, but I also believe given the amount of interaction he had with the Town and now with the county, that in some regards, I think our government, our local government has failed the applicant and I think, failed at the Township level. The Towns need to be equally aware of our Zoning requirements as the county is and I think you should have been informed of what the issues are and I think the communication between the Town and the County and the applicant could have alleviated this situation. So now, you have spent a significant amount of money, which is not a criteria we look at if there are alternative sites, which there are, and you admit there are, however, for me, the role of the Board of Adjustment is to not just be that black and white government structure. We listen to people, we react as people, we look at the law and as Mr. Kamrowski said, we are caught in the middle and have to make a decision. So based on what I feel is a failure of government, to support you guys appropriately. I did think you had a responsibility to check it out, but given that failure, I think that we need to figure out how to address that. My motion would be to grant the three variances.
- Mr. Kazmierczak – I am going to react to that. I understand totally and my feelings are very close to yours. As a matter of fact, I was almost going to say many of the same things, however, the comment I have, I have concerns with the failure that could be associated with this site and our responsibility to the neighbors, streams, all those kind of things and so I am going to respectfully disagree with you at this point in time.
- Mr. Klopp – There has been a motion to approve.
- Mr. Kazmierczak (*asked to comment at this time*) – Just to clarify, I want to make it clear why I disagree. The reason I disagree based on the three things; Unique Physical Limitations of the site. I don't think there is nothing on this site that precludes it from being located some place else. If you look at our responsibilities. Number two. There is not a lot of public interest, not at this point, in time, we don't know if the issue of runoff from there, there is a very strong possibility. Unnecessarily Hardship. That is one that I have a little bit of problem with. The problem is the unnecessary hardship is it can't be self imposed and in this case it is self-imposed. You guys put the fill in there and it is a hardship, absolutely it is a hardship, it is a financial hardship, but unfortunately, the statute is so darn specific. It comes right out and says, it cannot be self-imposed. So those are the three reasons, Mr. Drazkowski, that I disagree with you on this one. I just have to make that point clear and I have to get it on the record.
- Mr. Drazkowski – I agree. I think those are valid reasons.

Mr. Klopp asked Mr. Hohmann to approach the Board of Adjustment and questioned Mr. Hohmann if he saw the criteria when it comes to variances and Mr. Hohmann replied yes.

- Mr. Klopp - It says the applicant may not claim hardship when the conditions are self-imposed which you have brought this on yourself. As far as prior variances that we have granted or not granted, that has nothing to do with this application. Each variance is based on its own merit. I just wanted to show you this.
- Mr. Hohmann – (responded as follows) I understand what you are saying this it is self-imposed. There are many homes that budget this. I can do this. It is not a problem. I know about the variance; fifty feet from the centerline of the road. Mr. Litscher was there, we talked about it. I understood that. The self-imposed, yes, I can't deny that, yet that is why there are variances, ways to look at it. I look at it as did I mess up. Yah. I didn't go through the proper procedures from the get-go. If I would do it all over, I would do it different, but I can't.

- Mr. Kazmierczak – Mr. Hohmann, we respect that, we truly do. I understand that.
- Mr. Klopp – In seeing some of the photos, and still maybe you misunderstood me, I still feel a person could go towards your house, keep what you have and add more fill. I know a guy that does tree planting and he would be able to spade those trees out and you could put them somewhere else, so they are not gone from the premises. That would alleviate the seventy-five feet and maybe if you went that route, you could go back farther, to meet the offset from the centerline of the Town road. The Town does not have a problem with you encroaching on the road as far as the distance that you are now.
- Ms. Brown – Would that be that big of an issue.
- Mr. Klopp – You would probably have to haul in some black dirt or clay. That would stay a lot easier than the sand would. There is always fill that you can bring in and put on top, get it seeded in and mulched. There are other options for you folks. I know they are spendy and I know you said you spent a lot of money already.
- Mr. Klopp – With that. There has been a motion to approve the three variances.
- Mr. Klopp – I will second that motion to approve.
- Mr. Klopp – It's a tough decision. There are a lot of things that should have been done differently and that is what bothers me the most. I understand your situation. You folks seem sincere.
- Mr. Drzakowski – I think the motion would also include the conditions that were recommended by the Zoning staff. (as follows:) 1) The variance applies only to the proposed shed structure and not to any further or subsequent development on the parcel; 2) Applicants must apply for and be issued a Zoning Permit from the Buffalo County Zoning Department allowing the shed construction; 3) The proposed structure may extend no closer than 33 (thirty-three) feet to the centerline of Mustang Road); 4) Vegetation is the most effective erosion control measure; seed and mulch disturbed soil as soon as final grade is achieved. Utilize erosion control matting on disturbed slopes where additional stabilization may be required; 5) Finished slopes of the development pad shall be no greater than 3 (three) to 1 (one), a slope equivalent of 33 (thirty-three) % (percent).
- Mr. Klopp – There has been a motion and a second to approve Variance Application #2018-3 for Brent Hohmann. Mr. Drzakowski and Mr. Klopp voting yes. Mr. Kazmierczak voting no. Carried with the recommended conditions from the Zoning Department.
- Mr. Hohmann – Thank you. I understand the rules and follow them, but honestly I would not do anything to damage the creek. Thank you for taking time to review it and look at from our human side.
- M. Kazmierczak – The only thing I can tell you Mr. Hohmann, when you are going to construct the building, you better be very careful how you design it, because you indicated there is sand on there and if it is not properly graded, and not properly stabilized, you will have more than an erosion issue, you will have a building that will be collapsing along with everything else. It is not an easy engineering solution to what you have there, just so you understand. And I am sure some people will tell you it is. I am going to tell you it is not. I have dealt with things in flood plain for a long time, floodways and things of that nature and all I would say is that the last three years, we have had more rain than we had in the last thirty before that and they are no longer ½ inch rains at a time. I had five inches of rain at my place last night and that is not uncommon lately. So you need to design it properly. Can't just pour a slab and think you will have something done. So I encourage you strongly to have someone to take a look. It might cost you a little bit to do that; I understand that. And I respect the position you are coming from and I hope you respect how this Board has struggled with this, because we did. I have no further comments, Mr. Chair.

Minutes from the June 14, 2018 Board of Adjustment Public Hearing. Motion by Mr. Drazkowski to approve the minutes from the June 14, 2018 Public Hearing based on content. Seconded by Mr. Kazmierczak with the following corrections: top of page 4, 1st sentence, interrupted should be interpreted; page 4, 4th to last line, lien to should be lean to; page 5 in the middle, at end of line starting with My, that was said by Mr. Kamla, not Mr. Kazmierczak; page 10, two-thirds the way down the page, Mr. Kazmierczak commented that he respects his peers, not piers. All in favor. Carried.

Motion by Mr. Klopp, seconded by Mr. Kazmierczak to adjourn. All in favor. Carried. The public hearing was adjourned at 10:55 a.m.

Respectfully Submitted,

Julie Lindstrom
Zoning Administrative Assistant

DRAFT