

**DES MOINES COUNTY, IOWA
BOARD OF ADJUSTMENT
REGULAR MEETING MINUTES
THURSDAY, SEPTEMBER 26, 2019**

The Des Moines County Board of Adjustment met in regular session on September 26, 2019 at 5:00 P.M. in offices of the Southeast Iowa Regional Planning Commission, West Burlington, Iowa.

1. Call to Order

Chairman Sam Warner called the meeting to order at approximately 5:00 P.M.

2. Roll Call

Board members present: Dave Nuebel, Mitch Taeger, Sam Warner, John Wiberg

Board members absent: Criss Roberts (initially present, but excused herself for personal reasons and presence of quorum)

Staff Present: Zach James and Jarred Lassiter, SEIRPC

Public Present: James and Shawna Hunerdosse, variance applicants (ZVP-19-38)
Jeremy Grant, variance applicant (ZVP-19-43)
Robert and Judith Jackson, variance applicants (ZVP-19-47)
Marion and Linda Short, neighboring property owners (ZVP-19-47)

Mr. James informed the members that Ms. Roberts had recently submitted her resignation from the Board, indicating that she and her husband have moved to a different county, and are presently working to sell the house they own in the Burlington Two-Mile Area.

3. Tentative Agenda Approval / Amendment

No changes were made to the tentative agenda.

Motion #1: To approve the Tentative Agenda as presented.

Motion by: Taeger

Seconded by: Nuebel

Vote: Unanimous vote. Motion carried.

4. Meeting Minutes

Mr. Taeger noted that his last name was misspelled in one of the motions from the July 20, 2016 meeting minutes. Apart from this, no issues were addressed regarding these minutes.

Motion #2: To approve the Minutes of July 20, 2016 meeting as presented.

Motion by: Nuebel

Seconded by: Taeger

Vote: Unanimous vote. Motion carried.

5. New Business

A. Annual Election of Officers

Motion #3: To re-appoint Sam Warner as Chair of the Des Moines County Board of Adjustment

Motion by: Wiberg

Seconded by: Nuebel
Vote: Unanimous vote. Motion carried.

Motion #4: To appoint Mitch Taeger as Vice Chair of the Des Moines County Board of Adjustment
Motion by: Wiberg
Seconded by: Nuebel
Vote: Unanimous vote. Motion carried.

B. Public Hearing: Request for Variance from James and Shawna Hunerdosse for side yard setback at 5757 Summer Street

Mr. Warner opened the public hearing at approximately 5:04 P.M. Mr. James read the staff report, and noted that this case involves a residential addition that was built several years ago, without obtaining a Zoning Permit. He stated that the addition first appeared to comply with setback requirements, until it was discovered that the common lot line with their neighbor to the south (5739 Summer Street) was not consistent with what they and previous owners had long understood it to be. The issue stems from the fact that Summer Street is oriented at a slight diagonal, while the south property line extends straight from east to west.

With newfound awareness of this error, the Hunerdosses applied for a variance to account for the fact that the home addition is 1 foot away from the property line (confirmed by a surveyor), although the required side setback in an R-1 District is 15 feet. While they were willing to pursue a lot line adjustment instead, they have had difficulty communicating with the owners of 5739 Summer Street. Mr. James mentioned how the public hearing notice sent to that address – plus an earlier notice regarding their Home Occupation request – had been returned with the messages, ‘attempted delivery’ and ‘unable to forward’.

Mr. Taeger asked whether the swimming pool that is visible in the aerial photo crosses the property line. Mr. James noted that the pool does, in fact, cross the line – however, swimming pools are not presently regulated by the Des Moines County Zoning Ordinance. Mr. Lassiter stated that Land Use staff is presently preparing to update/overhaul the ordinance, and the issue of swimming pools with a permanent foundation is likely to be addressed. He referenced another instance where the placement of a pool had ramifications when the owner was working to sell part of their property. Mr. Taeger addressed the applicant and noted that regardless of whether this variance is approved, the pool issue will need to be resolved in the future, before either of the properties is sold again.

Mr. Warner addressed the aerial photo included in the Staff Report, noting that it appeared the same issue was occurring on the property to the south of 5739 Summer Street, with vehicles and equipment extending over the property line. Mr. James acknowledged this, noting its consistency with the angled path of Summer Street, and the property lines not being perpendicular with it.

Mr. Warner closed the public hearing at approximately 5:10 P.M.

Motion #5: To grant a Variance for side yard setback
Motion by: Taeger
Seconded by: Nuebel
Vote: All Ayes. Motion carried.

C. Public Hearing: Request for Variance from Jeremy Grant for front yard setback at 5607 Oak Hills Drive

Mr. Warner opened the public hearing at approximately 5:13 P.M. Mr. James read the staff report, and noted that this case involves a spec home built by Mr. Grant’s construction company, one that is currently up for sale. He stated that Land Use staff discovered that this home had been built without a permit in 2016. Upon being informed of this, Mr. Grant submitted an application for a permit, which included a front setback of 30 feet. Staff later inspected the site and determined that this measurement was up to 5 feet off, as Oak Hills Drive travels around a slight curve directly in front of the house. Mr. Grant then applied for a variance to account for the fact that the

attached side-loaded garage of this home has a setback of 25 feet, although the required front setback in an R-1 District is 30 feet.

Mr. James noted that since the staff report was first sent out to the Board members, a neighboring property owner, Wayne Krantz, had called to ask about the variance request, having received a public hearing notice by mail. When Mr. James explained it to him, he was fully satisfied and had no concerns.

Mr. Nuebel expressed incredulity at the continued widespread lack of awareness of the County's Two-Mile Zoning Ordinance. Mr. James noted that from his experience, many contractors that operate in Des Moines County are still unaware of the Ordinance.

Mr. Taeger asked if there is a minimum home size for the Oak Hills Subdivision, as it seemed unusual to him that Winegard would direct Grant's company to such a small lot. Mr. Grant stated that he worked closely with staff at the Winegard Realty Company, developers of the Oak Hills Subdivision, to ensure that the home met with their own list of requirements. He said that no one with the company had ever informed him of the need for a permit from the County. Mr. James noted that there have been several other recent instances where new homes or additions in the Oak Hills/Spirit Hollow area began construction without a permit, and Land Use staff has communicated with Winegard Realty directly, to reiterate the need for them to tell contractors about the County Zoning.

Mr. Grant acknowledged that he shortened the width of the garage by 6 feet to accommodate the company's setback requirements. He noted that their requirements use the centerline of the street as a reference point, instead of the right-of-way line that the County uses. Mr. Nuebel asked if the right-of-way width is 66 feet for Oak Hills Drive. Mr. Lassiter said that it was actually 50 feet, and this exception was allowed when the subdivision was first approved in 1998.

Mr. Warner closed the public hearing at approximately 5:23 P.M.

Motion #6: To grant a Variance for front yard setback
Motion by: Wiberg
Seconded by: Nuebel
Vote: All Ayes. Motion carried.

D. Public Hearing: Request for Variance from Robert and Judith Jackson for side yard setback at 11986 Tama Road

Mr. Warner opened the public hearing at approximately 5:26 P.M. Mr. James read the staff report, assisted by Mr. Lassiter. He stated that the applicants had built a residential addition to an existing garage in 2017, without obtaining a permit. He said that in 2015, they had submitted Zoning and Floodplain Development permits to the late Jeff Hanan, then serving as Land Use Administrator. This was for the simple expansion of an existing garage, as their residence is on the levee side of the river, and they wanted additional storage space. Mr. Lassiter said that FEMA updated Des Moines County's floodplain maps that year, and Mr. Hanan appears to have recommended that they hold off on the building project until the new maps became effective, as the requirements would then become less restrictive for new construction. Evidently, when Mr. Hanan later informed the Jacksons that the maps were now effective, they obtained the mistaken impression that no additional permits of any kind were needed for their property.

It was noted that the most recent addition now effectively makes this building a residence – a principal use, rather than an accessory use. Accordingly, for an existing residential lot in an A-1 District (under 2 acres), the side setback for a principal use is 15 feet instead of 5, so the building no longer complies with the Ordinance. Accordingly, the Jacksons submitted a variance request to allow for a side setback of 7.5 feet.

Mr. James referenced an additional complication that affects this case – there has been a collective misunderstanding between the Jacksons and their neighbors at 11972 Tama Road, regarding the location of the

rear lot line with a large property owned by Ron Wunderlich. This has been proposed to be rectified through a new subdivision, which would add considerable depth to both lots. Mr. Nuebel asked if Mr. Wunderlich was in favor of these changes. Ms. Jackson stated that he was the person who had requested the subdivision on their behalf, as he had been similarly mistaken as to the property line's true location.

Mr. Warner asked Mr. and Mrs. Short, owners of 11972 Tama Road, when they built the attached garage that also has a side setback of 7.5 feet. Mr. Short stated that this was in the 1990s, prior to the Zoning Ordinance taking effect.

Mr. Taeger asked what was delaying the subdivision process. Ms. Jackson said that they had already paid a surveyor to prepare a subdivision plat, and are simply waiting for them to finalize the plat and submit it to the Land Use department. Mr. Short said that this has been going on for as long as 3 or 4 years now, and expressed frustration as to why it hasn't been resolved yet. Mr. Taeger asked what the recourse would be if the subdivision weren't completed within a year, as the recommended condition for approval would require. Mr. James said that if that happened, the variance would become null and void.

Mr. Nuebel recommended that the Board proceed with caution on this matter, and said that it would be unwise to approve a variance when the building in question still sat partially on someone else's land. Mr. James said that the Board is welcome to table the matter for a future meeting, if they feel this is appropriate.

Mr. Warner closed the public hearing at approximately 5:46 P.M.

Motion #7: To table the matter until the proposed Wunderlich Subdivision has been approved and recorded

Motion by: Taeger

Seconded by: Nuebel

The motion was rescinded by Mr. Taeger following further discussion.

Mr. Wiberg said that he would prefer to avoid making the Jacksons and Shorts attend another meeting to address this matter. He felt that the 1-year requirement for getting the Subdivision completed would be sufficient, and the matter could be brought up again if the deadline passed without the requirement being met. Mr. Taeger then acknowledged that he had previously misunderstood the implications of this course of action, and said that it now makes sense.

Motion #8: To grant a Variance for side yard setback, with the condition that a re-subdivision of 11972 and 11986 Tama Road, with side yard setbacks of 7.5 feet along the common property line, shall be completed within one year of approval

Motion by: Taeger

Seconded by: Wiberg

Vote: All Ayes. Motion carried.

6. Old Business

Mr. Nuebel referenced a matter that had been brought up in previous Board of Adjustment meetings when the late Jeff Hanan served as Land Use Administrator. At the time, he presented his concern over the fact that Variances approved by the Board were not being recorded at the Des Moines County Recorder's Office. He reiterated his previous concern, noting that Zoning compliance is sometimes addressed during the transfer of property, and without a recorded Variance attached with the property, there is no indication that it is compliant with the Zoning Ordinance. He stated that the Board's prior understanding was that Land Use staff would consult with the County Attorney and Zoning Commission about adding a requirement to the Zoning Ordinance for recording variances.

Mr. James noted that Land Use staff is presently preparing for an extensive update/overhaul of the County's Zoning and Subdivision Ordinances, and that they will take the Board's recommendation into consideration as part of this process.

7. **Communications**

None presented.

8. **Future Agenda Items**

None presented.

9. **Adjournment**

Motion #9 To adjourn
Motion by: Nuebel
Seconded by: Wiberg
Vote: Unanimous vote. Motion carried.

The meeting adjourned at approximately 5:57 P.M.

APPROVED: 

Sam Warner
Board of Adjustment, Chair

Attest: 
Zach James
Land Use Administrator