

**DES MOINES COUNTY, IOWA
BOARD OF ADJUSTMENT
REGULAR MEETING MINUTES
TUESDAY, MARCH 24, 2020**

The Des Moines County Board of Adjustment met in regular session on March 24, 2020 at 5:00 P.M. The public health emergency regarding COVID-19 (Coronavirus) made it impractical to hold this meeting in person. The meeting took place through a conference call originating at the offices of the Southeast Iowa Regional Planning Commission, 211 N Gear Avenue, West Burlington, Iowa 52655.

1. Call to Order

Chairman Sam Warner called the meeting to order at approximately 5:01 P.M.

2. Roll Call

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

Board members absent: none (one position remains vacant)

Staff Present: Zach James and Jarred Lassiter, SEIRPC

Public Present: Dustan Fenton, variance applicant (ZVP-20-07)
Carl Gerst, variance applicant (ZVP-20-11)
Bill and Shari Martin, neighboring property owners (ZVP-20-07)
Terrie Whiting, neighboring property owner (ZVP-20-07)

Staff and Mr. and Mrs. Martin attended via a video link on the Zoom application, while all other attendees attended via a phone connection. Mr. James asked for a voice roll call for all attendees, including the Board members.

3. Tentative Agenda Approval / Amendment

It was decided to move item C. under New Business ahead of item B. to allow the applicant for item B. additional time to join the conference call.

4. Meeting Minutes

No comments or corrections were provided regarding the minutes prepared for the previous meeting.

Motion #1: To approve the Minutes of September 26, 2019 meeting as presented.

Motion by: Nuebel

Seconded by: Taeger

Vote: Unanimous vote. Motion carried.

5. New Business

A. Annual Election of Officers

Motion #2: To re-appoint Sam Warner as Chair of the Des Moines County Board of Adjustment

Motion by: Nuebel

Seconded by: Wiberg

Vote: Unanimous vote. Motion carried.

Mr. Taeger, elected as Vice Chair at the September 2019 meeting, recommended that one of the other two members replace him, due to the possibility that a current bill in the Iowa State Legislature would, if signed in its present form by Governor Reynolds, would make him no longer eligible to serve on the Board, as he resides outside the Two-Mile Area covered by the Des Moines County Zoning Ordinance.

Motion #3: To appoint Dave Nuebel as Vice Chair of the Des Moines County Board of Adjustment
Motion by: Wiberg
Seconded by: Taeger
Vote: Unanimous vote. Motion carried.

B. Request for Variance from Carl Gerst for rear yard setback at Gerst Subdivision Lot 1 (125th Street – address not yet assigned)

The order of proceedings from the Tentative Agenda was adjusted to present on the second listed Public Hearing first, as the applicant for the first listed Public Hearing was not yet present.

Mr. James read the staff report, noting that Mr. Gerst had submitted a Zoning Permit application on February 7, 2020, for construction of a single-family home on a lot that was subdivided off of his family's property in 2019. At the time, he was informed of the setback requirements for a residential lot over 2 acres in the A-1 Agricultural District, and it was apparent that the minimum rear setback of 100 feet would be impossible given the depth of the lot on its north side. At the time, Mr. Gerst had indicated that due to concerns of flooding if the Mississippi River levee were to breach, he was not comfortable building on the southern half of the property, which is 20 feet lower in elevation.

Mr. James noted that the variance request is largely due to a technicality, based on how the term 'Front Yard' is defined in the Zoning Ordinance to mean 'a yard extending the full width of the front of a lot between the front lot line or right-of-way line and the front building line'. He noted that despite the ordinance's inflexible definition of 'front yard' in relation to the right-of-way line, the front entrance of both the house and attached shop/garage would face south, instead of west toward 125th Street.

Mr. Lassiter asked Mr. Gerst if he had anything else to offer in explaining his proposed development. Mr. Gerst stated that it was always his intention to have the house face south, even before the need for a variance request was known. He also indicated that he previously discussed his plans for driveway access with County Engineer Brian Carter, with the driveway to enter from south of the building and turn northward to the garage.

Mr. Gerst also went into detail about the flooding history of the property, as it has been in his family's ownership for generations, and his father previously served on the board of the Levee & Drainage District. He noted that the drop-off from north to south is deceptively significant to the casual observer, and the south part flooded in both 1965 and 2008, with the former resulting from a levee breach at Dumbell Lake. Mr. Nuebel asked if Dry Branch Creek is a cause of flood risk on the property. Mr. Gerst stated that this is not a factor, as water from that creek has never exceeded the height of the river levee.

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

Motion #4: To grant a Variance for rear yard setback, to allow for a minimum setback of 70 feet
Motion by: Nuebel
Seconded by: Wiberg
Vote: All Ayes. Motion carried.

C. Request for Variance from Dustan and Joni Fenton for side yard setback at 11475 Plank Road

Mr. Warner opened the public hearing at approximately 5:26 P.M. Mr. Fenton stated that he had difficulty connecting to the meeting at 5 PM due to bad cell phone reception and had since moved to a different location to connect.

Mr. James read the staff report, noting that Mr. Fenton had submitted a Zoning Permit application on February 7, 2020, which involved two components: construction of a detached garage, and construction of a 439 SF addition to his existing house. He stated that the first component would be fully compliant with the Zoning Ordinance, while the second would not, as the minimum side setback is 15 feet for a residential property of less than 2 acres in the A-1 Agricultural District. The home's existing side setback is already 15 feet, and the 8-foot wide addition would bring the side setback down to 7 feet. Mr. James also noted that Mr. Fenton had expressed concerns about flooding and ground saturation at the west side of his property and was therefore not receptive to doing the building addition on that side instead.

Mr. James then noted that Mr. Fenton's neighbor to the south, Mr. Martin, had called him the day before to inquire about the variance request. Since Mr. Martin was in attendance, Mr. James suggested that he explain his concerns directly. Mr. Martin said that he was concerned that Mr. Fenton may inadvertently build the house over the line onto his property, due to an inaccurate assessment of where the actual line is. He noted that Mr. Fenton had previously constructed a paved driveway that encroaches several feet onto his property, and while this does not bother him, the prospect of a permanent structure doing the same does. He stated that he had not seen specific plans for Mr. Fenton's proposed addition prior to the meeting, and based on what had been discussed, he would have no problem if the building came as close as 7 feet from the property line (as proposed in the variance request).

Mr. Fenton questioned the accuracy of the lot line placement on the County GIS website, and said that he had previously talked about this with Mr. Lassiter, who relayed the information to the GIS Department, resulting in a slight change to the line placement on the website. Mr. Fenton said it could still be slightly off from the accurate location.

Mr. Nuebel asked Mr. Fenton whether he had considered building the addition as a second story, instead of expanding the first story outward. Mr. Fenton said that he hadn't considered this, and he and his wife would personally prefer not to add a second story.

Mr. Taeger asked about the structural characteristics of the south section of the existing home, which would be expanded as part of the proposed building addition. Mr. Fenton stated that it was originally an enclosed side porch, but after his family purchased it, he converted it to a bedroom. Mr. Nuebel asked what the foundation for the bedroom is, and Mr. Fenton stated that it was a cement foundation. He noted that it currently has a metal roof, but one of the primary intentions of the building addition is to incorporate a pitched roof over the south end of the building, mirroring the appearance of the rest of the home, and removing the appearance of a lean-to.

Mr. Nuebel asked how many bedrooms are in the home. Mr. Fenton said that there are three, and this proposed addition would not add another bedroom, but merely add closet space for one of the existing bedrooms. The only entirely new room to be created would be a second bathroom. He indicated that he would be receptive to a 5-foot building addition instead of 8 feet, if the Board would be more receptive to that. However, 5 feet would be the bare minimum necessary to accomplish his goals for this project.

Mr. Lassiter noted that the lot on which Mr. Fenton's home sits was created as part of the Honey Creek Subdivision in 2002, and as such, the location of the survey markers is shown on the final plat. Mr. Nuebel strongly advised Mr. Fenton and Mr. Martin to locate the markers, to confirm whether Mr. Fenton's proposed addition would actually fit upon his own property. He noted that there could be substantial legal ramifications if a future owner went to sell the property, and it was discovered that a building crossed the property line.

Mr. Warner asked staff and the other Board members how they should proceed with this matter, since there appears to be agreement that a 7-foot setback would be acceptable, but the parties involved are not yet entirely confident on where the property line is located. Mr. James said there are two logical options – 1) table the matter to a future meeting and wait until the survey markers can be found and setbacks can be verified, or 2) approve the variance now, with an attached condition that it only applies if the property line can be verified and the addition does not come any closer than 7 feet from the line.

Mr. Wiberg said he preferred approving the variance with an attached condition, since it would be a smoother process for all involved, and staff could enforce to ensure that the condition is satisfied.

Mr. Nuebel said that he would be fine approving a variance on the condition that the 7-foot setback could be confirmed by finding the survey markers. Mr. Fenton indicated that it's possible that the original front pin from 2002 may have been dislodged when his driveway was paved. In addition, Mr. Martin said it may be too difficult to measure between the front and rear lot pins since the rear pin is on the other side of Honey Creek. Mr. Nuebel stated that if the two neighbors could not reasonably confirm where the line is located, they will need to have it formally surveyed. Mr. Fenton expressed his willingness to comply with this requirement, if necessary.

Ms. Whiting asked if Mr. Fenton could locate the survey pins on the north side of the property, where her land borders his. Mr. Fenton said that this matter is irrelevant to the discussion, as the item that necessitated a variance request was not on the side of his property facing hers.

Mr. James stated that if the Board members are comfortable voting to approve the variance now, then staff will coordinate with Mr. Fenton in the coming weeks to set up an in-person meeting to verify the property line location, once the neighbors have determined for certain where it is and visibly marked it.

Mr. Warner closed the public hearing at approximately 6:08 P.M.

Motion #5: To grant a Variance for side yard setback, to allow for a minimum of 7 feet, on the condition that the property pins shall be located by the adjoining property owners at 11475 and 11385 Plank Road, and if these cannot be located, the property shall be surveyed to verify the property line, so that a minimum 7-foot side setback can be enforced by the Land Use Administrator.

Motion by: Nuebel

Seconded by: Wiberg

Vote: All Ayes. Motion carried.

6. Old Business

None presented.

7. Communications

None presented.

8. Future Agenda Items

Mr. James noted that one item of business had recently been removed from the agenda – ‘Discussion of Des Moines County Zoning Ordinance update; proposed changes’. It was determined that the nature of this presentation was not conducive to a meeting where the Board members were attending by phone. He noted that staff will plan on sending out a document outlining the changes in the coming months, if no further meetings would be necessitated by property owner petitions. In such case, members could review the materials independently and determine if a meeting were necessary to discuss them in greater detail.

Mr. James also clarified what Mr. Taeger had mentioned early on in the meeting – that a pair of Senate and Assembly bills (H.F. 2512 and S.F. 2264) had recently been approved by the respective chambers and were awaiting the Governor’s signature. These bills include a provision that would require all members of a Zoning Commission or Board of Adjustment to reside in the jurisdiction that is zoned – whereas the existing requirement is only that a majority of the members must reside in that area.

Mr. Lassiter noted that SEIRPC Executive Director Mike Norris had discussed the matter with the Governor's Legal Counsel, and informed them how this proposal would have a uniquely negative impact on Des Moines and a handful of other counties which do not have countywide zoning in the unincorporated areas. He noted that the likely intent of the bill is to prevent residents of incorporated municipalities from serving on County Zoning boards. As such, by slightly adjusting the wording of the legislation before the Governor signs it, it is possible that the vast majority of counties would not be impacted any differently, but Des Moines County could keep any members that reside in an unincorporated area outside the Burlington Two-Mile Area (which in the case of the Board of Adjustment, concerns only Mr. Taeger). He noted that at this point it is not clear whether such a change will occur, or how long it will be before the Governor signs the bill.

9. Adjournment

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

The meeting adjourned at approximately 6:14 P.M.

APPROVED: _____

Sam Warner
Board of Adjustment, Chair

Attest: _____

Zach James
Land Use Administrator