

# **Board of Adjustment MINUTES February 20<sup>th</sup>, 2020**

PRESENT: Matt Marx, Marvin Neubert, Mark Kaschmitter

Staff: Roxanne Achman, Karen Loehrer

1. Roxanne called the meeting to order followed by the Pledge of Allegiance.
2. It was decided to elect officers at the next meeting when there is a full board. Roxanne asked that a temporary chair be elected for this meeting. Matt moved to nominate Marvin as Temporary Chair. Mark seconded and the motion carried.
3. Marvin moved to approve the agenda. Matt seconded and the motion carried.
4. Marvin moved to approve the minutes and findings from the December 19<sup>th</sup>, 2019 meeting. Mark seconded and the motion carried.
5. File #19-646, Todd Payne requesting a variance to locate an illuminated billboard 100ft from a residentially zoned property (1,000ft required) in a Business District. Pursuant to Sections 9.1.7(I) and 11.5.1. The affected property is described as follows: part of the E1/2 lying NEly of Hwy 10, Section 4, Watab Township.

Matt, Marvin and Mark were at the site visit at 1:25 p.m. today with Roxanne and the applicant Troy Rheames.

Roxanne showed an aerial of the property pointing where the existing billboards are. In 2013 a conditional use permit was granted to install three billboards with the northern two illuminated. The southern billboard, the one being discussed tonight, was not illuminated due to being located within 1,000ft of a residential district. The request is to illuminate that billboard. She showed pictures of the existing sign from three different locations. The billboard is visible from the homes in the southwestern corner of Rockwood Estates. Roxanne stated that she did receive an email

from Watab Twp, who discussed this variance at their February 4<sup>th</sup> meeting, against the granting of this variance. No specific reason was given. Mark asked if MNDot commented. Roxanne stated the MNDot is okay with illuminated signs as long as there are two brightness settings, day time and night time. She stated that MNDot comments are addressed in the conditions.

Marvin moved to open the public hearing. Mark seconded and the motion carried.

Troy Rheaumes, 25113 21<sup>st</sup> St, St Cloud, stated that the sign is illuminated from the inside and goes straight out. The sign can be put on a timer. The screen can be dubbed down at night. This location is next to a gas station with a canopy and sign that are lit. He stated that the sign will face towards the road. Mark felt that the sign will act as a security light in the area. He asked Troy if he was at the Watab meeting. Troy was not. A photo of an illuminated sign at night was shown to the board. Troy stated that an illuminated sign is more saleable. The north two billboards are allowed to be lit but are behind trees along Hwy 10.

No one spoke in favor, opposition or general comments. Marvin moved to close the public hearing. Matt seconded and the motion carried.

Marvin asked if there were any comments from any Rockwood Estates residents. Roxanne stated that the public notice was sent to the owner of Rockwood Estate not the residents. Mark stated that the brightness would need to be reduced at night. Roxanne stated that is addressed in the conditions 5 – 7.

In reviewing Section 11.5.1 the vote was as follows:

- 1) Matt stated that per Section 9.1.7 of the Development Code, billboards are permitted with a conditional use permit in the Business District. The vote was unanimous that the proposed use is not prohibited in the zoning district in which the subject property is located.
- 2) Marvin cited Section 2.1.1. Mark cited Section 2.1.12. Matt cited Section 2.1.3. The vote was unanimous that the variance is in harmony with the general purposes and intent of the official controls.
- 3) Marvin cited Environment & Natural Resources, Goal #1: Stewardship, Policy #2. Scenic Resources. The vote was unanimous that the variance is consistent with the comprehensive plan.
- 4) a. Matt stated that if positioned properly the light shouldn't become an issue. Mark stated that the illumination of the billboard may cause light pollution issues for the nearby neighbors and residents at night. The sign needs to be able to be dimmed at night to reduce light pollution. This is mitigated by condition number 7. The vote was unanimous that the Property Owner proposes to use the property in a reasonable manner not permitted by an official control.  
b. Marvin stated that the current billboard can't be seen at night which makes it hard for the owner to rent it. Mark stated that the trees partially block the view of the sign. The vote was unanimous that the plight of the

landowner is due to circumstances unique to the property not created by the landowner.

c. Matt stated that the billboard is already there. If the light is directed correctly it should not affect the residents. Marvin stated that the lights can be dimmed down or turned off. The vote was unanimous that the variance will not alter the essential character of the locality.

d. Marvin stated that the illumination will make the billboard more appealing for advertisers. Mark felt that this would improve the dark corner and for security purposes.

Marvin moved to add the development conditions to File #19-646. Matt seconded and the motion carried.

Roxanne read the findings and conditions.

### Findings

1. The proposed use is not prohibited in the zoning district in which the subject property is located.

*Per Section 9.1.7 of the Development Code, billboards are permitted with a conditional use permit in the Business District.*

2. The variance must be in harmony with the general purposes and intent of the official controls. In accordance with:

*The Board of Adjustment shall determine which Sections apply to the variance request.*

Section 2.1.1 To promote and protect the public health, safety, comfort, convenience, and general welfare of the people.

Section 2.1.3 To promote the orderly development of residential, business, industrial, recreational and public areas.

Section 2.1.12 To further the appropriate use of land, and conserve and protect the natural resources of the county for present and future generations.

- 3) The variance must be consistent with the comprehensive plan.

### **Environment & Natural Resources**

Goal #1: Stewardship

**Policy #2. Scenic Resources:** Protect scenic values by controlling billboards and regulating signs, auto junkyards, and other potentially unsightly land uses and practices.

- 4) The variance may be granted if there are Practical difficulties in complying with the official control:
- a. Property Owner proposes to use the property in a reasonable manner not permitted by an official control.  
*The illumination of the billboard may cause light pollution issues for the nearby neighbors and residents at night. The sign needs to be able to be dimmed at night to reduce light pollution. This is mitigated by condition number 7.*
  - b. The plight of the landowner is due to circumstances unique to the property not created by the landowner.  
*The sign cannot currently be seen at night and through the trees. Illuminating the sign will allow the sign to be used.*
  - c. The variance, if granted, will not alter the essential character of the locality.  
*The sign is already there. If it is directed more towards Highway 10 and dimmed there shouldn't be an issue. It is possible to have it turned off at night if needed.*
  - d. The need for the variance involves more than economic considerations.  
*Illumination of the billboard would make it more appealing for advertisers and would improve the dark corner and for security purposes. It will add appeal to the billboard.*

The development conditions for File No. 19-646 are adopted.

Conditions:

1. This variance is approved for the location shown on the plans submitted with this application and is not transferable to other land.
2. A Land Use and Building Permit shall be obtained prior to any construction and shall be consistent with the plans and specifications submitted with the variance application.
3. Pursuant to Section 11.5.2 of the Development Code, this variance shall automatically expire, without notice, within one year after the date of approval unless the applicant has substantially proceeded on the work. To proceed substantially means to make visible improvements to the property and to have had applied to the property at least 40% of the people hours which it is reasonably estimated will be necessary for completion of the project. The Board of Adjustment may grant an extension of six months to complete the project if a written request for additional time is filed with the Board of Adjustment prior to the date of expiration of the variance. The request must

- specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.
4. The applicant shall permit reasonable access for the County to periodically inspect the site at reasonable times and in a reasonable manner to insure that the permit holder is in compliance with the conditions of approval and all other applicable statues, rules and ordinances.
  5. Message Display:
    1. Any Digital Display containing animation, streaming video, or text or images which flash, pulsate, move, or scroll is prohibited. Each complete message must fit on one screen.
    2. One message/display may be brighter than another, but each individual message/display must be static in intensity.
    3. The content of a digital display must transition by changing instantly, with no transition graphics (e.g., no fade-out or fade-in).
    4. Default Design: The sign shall contain a default design which shall freeze the sign message in one position if a malfunction should occur.
  6. Message Duration: The minimum message duration for any digital display shall be no less than ten (10) seconds,
  7. Brightness:
    1. Digital displays shall not exceed the following measurements of external illuminance:
      - a. Daytime: 4,500 candela per square meter (Nits)
      - b. Dusk until dawn: 350 Nits
    2. All digital displays shall submit an external illuminance plan and shall provide an ability to adjust external illuminance along with the contact information of person available to adjust external illuminance by request

Marvin moved to accept the findings and conditions and Grant File #19-646. Mark seconded and the motion carried. A copy of the findings, conditions and decision was given to Troy Rheames.

6. File #20-029, Steven and Rose Johnson requesting a variance to keep a storage structure larger than 1,200sf on a 0.7 acre lot in the R-1 Residential District. Pursuant to Sections 6.2 and 11.5.1. The affected property is described as follows: Part of Gov't Lot 4, Section 22, Watab Township.

Matt, Marvin and Mark were at the site visit at 1:45 p.m. today with Roxanne and the applicant, Stephen and Rose Johnson.

Roxanne stated that the applicants had two storage structures which they connected with a roof. This turns the structures into one structure, 2,078sf and on a .7 acre lot the maximum storage structure size allowed is 1,200sf. The request is to allow this structure to remain. Nancy Scott, Watab Building Inspector, indicated that the way this is currently constructed does not meet building code. One of the conditions, if approved, would be to bring the structure into compliance. This is a small lot. The county is looking at amending what is allowed to 5% of the lot size which this request would be over. In 1986 a variance for a larger structure was denied. Roxanne stated that she did receive an email from Watab Twp, who discussed this variance at their February 4<sup>th</sup> meeting, in support of granting this variance. There was a discussion about connecting the garage to the house with a breezeway. Marvin stated that the lots in this area are small.

Mark moved to open the public hearing. Matt seconded and the motion carried.

Steven Johnson, 7650 NE River Rd, stated that they are asking for additional storage space. He stated that they could put up another structure at 900sf. Steve stated that his neighbors have no objection. Mark stated that this was put up without a permit. Steve stated that they got a permit to reroof and thought they could add the roof between the structures. He stated that they used to hang a blue tarp between the buildings.

No one spoke in favor, opposition or with general comments. Mark moved to close the public hearing. Matt seconded and the motion carried.

In reviewing Section 11.5.1 the vote was as follows:

- 1) Marvin stated that one storage structure up to 1,200sf is permitted within the R-1 district. Other storage structures must be 900sf or less. The vote was unanimous that the proposed use is not prohibited in the zoning district in which the subject property is located.
- 2) Matt cited Section 2.1.1. Mark cited Section 2.1.3 and Marvin cited 2.1.6. The vote was unanimous that the variance is in harmony with the general purposes and intent of this ordinance.
- 3) Matt stated that the Comprehensive Plan does not specifically address the size of accessory structures. It does, however, promote effective development planning in the county. Marvin cited Land Use Goal 1: Planning for Growth, Policy #2. Plan Implementation. The vote was unanimous that the terms of the variance are consistent with the comprehensive plan.
- 4) a. Marvin stated that the Development Code allows for a storage structure up to 1,200sf and additional structure up to 900sf to keep the area looking residential instead of a storage site. The vote was

unanimous that the property owner proposes to use the property in a reasonable manner not permitted by an official control.

b. Matt stated that the property is .7 acres. The addition doesn't take up any more of the lot. Mark felt the addition is more presentable. The vote was unanimous that the plight of the landowner is due to circumstances unique to the property, not created by the landowner.

c. Mark stated that the addition will be on the same footprint as the existing structures. Matt stated that the addition doesn't alter the character of the locality. It will blend in. The vote was unanimous that the variance will not alter the essential character of the locality.

d. Matt stated that the need for storage is to keep things secure. The vote was unanimous that the need for the variance involves more than economic considerations.

Marvin moved to add the development conditions to File #20-029. Matt seconded and the motion carried.

Roxanne read the findings and conditions

#### Findings

1. The proposed use is not prohibited in the zoning district in which the subject property is located.

One storage structure up to 1,200sf is permitted within the R-1 district. Other storage structures must be 900sf or less.

2. The variance must be in harmony with the general purposes and intent of this ordinance.

The Board of Adjustment shall determine which Sections apply to the variance request.

Section 2.1.1 To promote and protect the public health, safety, comfort, convenience, and general welfare of the people.

Section 2.1.3 To promote the orderly development of residential, business, industrial, recreational and public areas.

Section 2.1.6 To prevent such additions to, and alterations or remodeling of, existing buildings or structures as would not comply with the restrictions and limitations imposed hereunder.

3. The terms of the variance must be consistent with the comprehensive plan.

The Comprehensive Plan does not specifically address the size of accessory structures. It does, however, promote effective development planning in the county.

#### Land Use

##### Goal 1: Planning for Growth

Policy #2. Plan Implementation: Review the Comprehensive Plan annually and amend as necessary to ensure its usefulness as a practical guide for current and future development. Adhere to this Plan, which shall guide all zoning changes, as closely as possible to ensure consistent development policy. Formulate and enforce County ordinances to ensure development in accordance with the Comprehensive Plan.

4. The landowner must show that the variance is necessary to alleviate practical difficulties in complying with the official control. "Practical Difficulty" as used in connection with the granting of a variance means:

- a. The property owner proposes to use the property in a reasonable manner not permitted by an official control.

The development code allows for a storage structure up to 1,200sf and additional storage structures that are 900sf or less. It retains the character of residential districts rather than the property appearing to be a primary site for storage.

- b. The plight of the landowner is due to circumstances unique to the property, not created by the landowner.

The property is 0.7 acres. The addition doesn't take up more space than what is currently there. The addition is more presentable.

- c. The variance, if granted, will not alter the essential character of the locality.

The addition will be on the same footprint as the existing structures. It won't alter the character of the locality. The addition blends in.

- d. The need for the variance involves more than economic considerations.

The need for storage away from thieves was an issue.

The development conditions for File No. 20-029 are adopted.

Conditions:

1. This variance is approved for the location shown on the plans submitted with this application and is not transferable to other land.
2. A Land Use Permit must be obtained from Benton County and Building Permit must be obtained from Watab Township within 30 days of approval by the Board of Adjustment.
3. Roofline must be corrected to meet building code.
4. Pursuant to Section 11.5.2 of the Development Code, this variance shall automatically expire, without notice, within one year after the date of approval unless the applicant has substantially proceeded on the work. To proceed substantially means to make visible improvements to the property and to have had applied to the property at least 40% of the people hours which it is reasonably estimated will be necessary for completion of the project. The Board of Adjustment may grant an extension of six months to complete the project if a written request for additional time is filed with the Board of Adjustment prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.
5. The applicant shall permit reasonable access for the County to periodically inspect the site at reasonable times and in a reasonable manner to insure that the permit holder is in compliance with the conditions of approval and all other applicable statues, rules and ordinances.
6. The applicant shall obtain a septic compliance inspection and submit it to the Benton County Department of Development no later than June 1st, 2020.

Marvin moved to accept the findings and conditions and grant File #20-029. Matt seconded and the motion carried. The applicant was given a copy of the findings, conditions and decision.

7. Mark moved to adjourn at 8:15 p.m. Matt seconded and the motion carried.

Respectfully submitted,

Karen E Loehrer  
Administrative Secretary