

Board of Adjustment MINUTES May 16th, 2019

PRESENT: Mitch Czech, Marvin Neubert, Matt Marx

Staff: Roxanne Achman, Karen Loehrer

- 1) Mitch called the meeting to order followed by the Pledge of Allegiance.
- 2) Marvin added to the agenda a discussion on new members. Matt moved to approve the agenda as amended. Marvin seconded and the motion carried.
- 3) Mitch moved to approve the minutes from the April 18th, 2019 meeting. Matt seconded. Marvin abstained. The motion carried.
- 4) File #19-098, Donald and Tami Spiczka requesting a variance to place a storage structure nearer the front lot line than the principal building in the R-1 Residential District. Pursuant to Sections 6.2.5 and 11.5.1. The affected property is described as follows: part of the NW1/4 SE1/4, Section 11, Watab Township.

Three members were present for the on-site inspection of this property with staff.

Roxanne stated that the variance is for a storage structure to be placed within the front yard. The property is located southeast of Little Rock Lake. She showed an aerial photo of the site pointing out the contours of the hill. The house abuts the hill which eliminates the back yard. The only usable property is in front of the home and due to this being a residential district there is a requirement that accessory structures must be placed behind the principle structure which is impossible with the topography of this lot. The house was built prior to the adoption of the Development Code. The applicant proposes to replace the existing accessory structure with a 40'x60' structure. The structure will meet all setbacks.

Donald Spiczka, 9992 Sucker Creek Rd, stated that due to the hill behind and on the sides of the house they are proposing to replace an

existing storage shed in the front of the house. They are asking for this variance to be approved.

Todd Waytashek, Watab Township stated that the Township is in support. He felt that with the rules there needs to be some exceptions.

Marvin moved to close the public hearing. Matt seconded and the motion carried.

In reviewing Section 11.5.1 the vote was as follows:

- 1) Mitch stated that accessory buildings are permitted in the R-1 zoning district. 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 2.1.3 because the shed does promote the orderly development of the residential area. Marvin added Sections 2.1.1 and 2.1.5. Mitch agreed and stated that there is no other place on the lot for the structure. There is a lot of room in the front yard. The vote was unanimous that the variance is in harmony with the general purposes and intent of the official controls.
- 3) Marvin stated that the site is planned Rural-Residential. Rural Residential is low density housing that is not expected to be annexed to a city. He cited **Housing Goal #1: Housing Stock**. Continue to maintain a high quality living environment in all residential neighborhoods and upgrade those in need of improvement. 2. **Life Cycle Housing**: Promote the improvement and maintenance of the existing housing stock to ensure that an adequate amount of housing is maintained, including retrofitting existing homes to better serve families in need of affordable housing. and **Land Use Goal #4: Natural Resources** Identify, protect and preserve the County's high quality natural areas and open space. 2. **Development Review**: protect the integrity of major natural resources through development review and regulation. The vote was unanimous that the variance is in harmony with the Comprehensive Plan.
- 4) a. Mitch stated that a storage structure is a permitted use within the zoning district. The storage structure is permitted by size for the property. The applicant is improving the structure that is there by replacing it. This will make the lot look better. The property owner has no choice but to build in front of the home. 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 there is no other place to put the shed besides in front of the house due to the topography of the lot. Marvin stated that the house was built before 1977 prior to the Development Code. The house was built back on the lot leaving no area behind it for an accessory structure. Mitch stated that the house will still be visible from the road with the new structure. The vote was unanimous that the plight of the landowner is due to circumstances unique to the property not created by the landowner.
c. Marvin felt that by replacing the old structure in the same location with a new structure will improve the property. There will be screening. The vote

was unanimous that the variance, if granted, will not alter the essential character of the locality.

d. Mitch stated that the new building will improve the looks for the site. The house was built prior to Development Code. The variance will allow the homeowner to improve the look of their existing site and move personal property out of the elements for proper storage. The vote was unanimous that the need for the variance involves more than economic considerations.

Marvin moved to include the development conditions to file #19-098. Mitch 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.

Accessory storage structures are permitted in the R-1 zoning 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 2.1.5 To prohibit uses, buildings or structures which are incompatible with the character of development or the permitted uses within specified zoning districts.

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

Housing Goal #1: Housing Stock

Continue to maintain a high quality living environment in all residential neighborhoods and upgrade those in need of improvement.

2. Life Cycle Housing: *Promote the improvement and maintenance of the existing housing stock to ensure that an adequate amount of housing is maintained, including retrofitting existing homes to better serve families in need of affordable housing.*

Land Use Goal #4: Natural Resources

Identify, protect, and preserve the County's high quality natural areas and open space.

2. Development Review: protect the integrity of major natural resources through development review and regulation.

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.

A storage structure is a permitted use within the zoning district. The storage structure is permitted by size for the property. The applicant is improving the structure that is there by replacing it. This will make the lot look better. The property owner has no choice but to build in front of the home.

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

There is no other place to locate the structure due to the topography of the lot. The home was constructed in 1977, prior to the existence of the development code. The hill is also a hindrance that was not created by the landowner.

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

The old shed will be coming down and a new one in its place. The accessory structure will be screened by existing vegetation.

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

The variance would allow for the homeowner to improve the look of their existing site and move personal property out of the elements for proper storage.

Development conditions for file no. 19-098 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. The applicant shall utilize appropriate erosion control methods as necessary and needed.
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. Applicant shall submit a septic compliance inspection no later than June 1, 2019

Matt moved to accept the findings and conditions and grant File #19-098. Marvin seconded and the motion carried. The applicant was given a copy of the findings, conditions and decision.

- 5) File #19-100, Anna McKeehan requesting variances to 1) construct a house addition and attached garage 10 ft. from the side property line (15 ft. required) and 2) allow 30% lot coverage (25% allowed) in the R-2 Residential District. Pursuant to Sections 7.4.3(e)(h) and 11.5.1. The affected property is described as follows: N120 ft. of S240 f.t of Gov't Lot 5, Section 11, Watab Township.

All three members were present for the on-site inspection of this property with staff.

Roxanne stated that the property is located on the south end of Little Rock Lake. She went over the background of the property. The request is to expand on the existing home with a 48'x41' home addition and a 68'x36' garage addition. The addition would be 10ft off the south property line. The proposed addition brings the impervious surface to 32% not 30% as advertised. The concrete from the garage that was removed is still in place creating more impervious surface. The request can't be acted on at 32% so if the variance is approved the concrete would have to be removed. She stated that there is concern from neighbors that the lot is being over built. There was discussion on different configurations on the lot for impervious surface and meeting the setbacks.

Anna McKeehan, 9805 Sharon PI NW, stated that they planned on removing the concrete slab. She stated that she lost her storage space and is currently renting two storage units. Originally she wanted to construct a storage shed. She stated that the actual living place on the main floor of the house is 2 bedrooms, a bathroom, kitchen and a living room with a bedroom upstairs. She would like additional living space and storage area for her things that are currently outdoors. Marvin asked if the applicant would be willing to remove 5ft from the proposed addition to meet the side setback. Anna stated that she would agree to removing 5ft. she stated that there is a wide open space to the south of the existing house and felt that the addition would center the house on the lot. Mitch stated that the hardship is that she needs more living and storage space. Anna stated that she would like the master bedroom on the main level of the house.

Eric Spoden, contractor, stated that where the existing house is positioned on the lot the addition will help balance out the lot. Everything will match. They would like to store things inside.

Todd Waytashek, Watab Township, stated that there is a reason for limited impervious surface so ground water can be absorbed. He stated that he also heard from neighbors regarding over building on this lot. He felt an addition could be done within the required setbacks and impervious surface.

Anna McKeehan stated that the neighbor to the north and south are closer to the property lines. She said that she doesn't want to build on top of her neighbors. She just needs to add to her home. She felt that building in the center of the lot would not take way from any run off or water absorption. The structure is far enough from the lake and road.

Roxanne stated that if the applicant reduces the addition by 5ft which would meet the setback that variance would not be needed. For clarification, if the applicant plans to meet the 15ft setback requirement and remove the need for that variance the applicant should state that she plans to meet the setback and remove that variance request. The impervious surface needs to be calculated to the 30% requested. With the detached garage, concrete slab and 5ft of the addition removed the impervious surface is at 29.5%.

Anna asked for clarification that if they take 5ft from the proposed addition the variance to the side setback is not needed and by removing the concrete slab and detached garage and 300sf of addition lowers the impervious surface. She agreed to go 15ft from the property line by removing 5ft from the proposed addition eliminating the need for the side yard setback variance. She agreed to remove the detached garage and concrete slab.

Matt moved to close the public hearing. Marvin seconded and the motion carried.

In reviewing Section 11.5.1, for an impervious surface of 29.5%, the vote was as follows:

1. Matt stated that a single family dwelling is a permitted use in the R-2 Single Family Residence District. Marvin said permitted also in the Shoreland District

- according to Section 7.4 and 7S5.21 of the Development Code. 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 Sections 2.1.1, 2.1.3 and 2.1.12. The vote was unanimous that the variance is in harmony with the general purposes and intent of the official controls.
 3. Mitch stated his concern with the amount of impervious surface being proposed and the amount of space being taken up. This is a large structure for the neighborhood. The vote was 1-in favor and 2-opposition that the variance is consistent with the Comprehensive Plan. Item failed.
 4. a. Matt stated that additions are permitted. Marvin stated that additions are allowed in this district. Mitch stated that the property owner could avoid the impervious surface issue by removing structures. Matt stated that the addition would block the view and take away the essence of the neighborhood. The vote was 1-in favor and 2-opposition that the property owner proposes to use the property in a reasonable manner not permitted by an official control. Item failed.
b. Marvin stated that there are no unique issues with this site. He stated that there are many structures in the area that don't meet the setbacks. Mitch stated that with the lots combined creating a large lot there are no unique issues that create a hardship over impervious coverage. Matt stated that the addition could be downsized to be more compatible with the impervious surface. The vote was 1-in favor and 2-opposed that the plight of the landowner is due to circumstances unique to the property not created by the landowner. Item failed.
c. Mitch stated that the house is already large and it would look out of place being expanded. Matt felt the addition would affect the character of the neighborhood. Marvin felt the addition would improve the area, clean-up site. The vote was 1-in favor and 2-opposed that the variance will not alter the essential character of the locality. Item failed.
d. Matt stated that it is proven that the property owner needs storage space. Marvin stated that the request is for more usable storage. The vote was unanimous that the need for the variance involves more than economic considerations.

Roxanne read the findings and decision.

Findings

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

A single family dwelling is a permitted use in the R-2 Single Family Residence District and Shoreland District according to Section 7.4 and 7S5.21 of the Development Code.

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. There is a concern over the amount of impervious surface being proposed and the amount of space being taken up. This is a large structure for the neighborhood. This item failed with a vote of 2-1.

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.

Additions are permitted and the property owner could avoid the impervious surface issue by removing structures. The lot will look plugged up. The addition would block the view and take away the essence of the neighborhood. This item failed with a vote of 2-1.

b. The plight of the landowner is due to circumstances unique to the property not created by the landowner. There are no unique issues with this site that create a hardship. The lots are combined to make a larger lot. The property owner could downsize. This item failed with a vote of 2-1.

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

The home is already large, it would look out of place be being expanded. The addition would affect the character of the neighborhood. It would look more commercial than residential. This item failed with a vote of 2-1.

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

It was proven that the property owner needs storage space. Motion passed 3-0.

Decision:

Upon reviewing the above criteria the Benton County Board of Adjustment denies the Variance request #19-100 based upon the above noted findings. Motion passed 3-0.

The applicant was given a copy of the findings and decision.

- 6) 8:21 p.m. File #19-109, Oscar Castellanos requesting a variance to construct additions onto a non-conforming house that is 55ft from the center line of a county road (125ft required), 5ft from the property line (15ft required) and 47ft from the ordinary high water mark (100ft required) in the R-3 Residential District. Pursuant to Sections 7.5.3(d)(e), 7S5.21 and 11.5.1. The affected property is described as follows: Part of Gov Lot 1, Section 22, Watab Township.

Three members were present for the on-site inspection of this property with staff.

Roxanne showed the site plan. This is a legal non-conforming structure meaning it doesn't meet any setbacks because of when it was built. All variances requests are for existing setbacks. The additions will not encroach into the setbacks. The landowner has agreed to remove existing impervious surface to meet that requirement.

Oscar Castellanos, 7847 NE River Rd, stated he bought this house in February. The addition will not add to the impervious ground. The plan is to remove the inside wall and square off the garage.

Todd Waytashek, Watab Township, stated that there is no issue, the previous surface will remain the same.

Matt moved to close the public hearing. Marvin seconded and the motion carried.

In reviewing Section 11.5.1 the vote was as follows:

- 1) Marvin stated that a single family dwelling is a permitted use in the R-3 Single Family Residence District and Shoreland District according to Section 7.5 and 7S5.21 of the Development Code. The vote was unanimous that the proposed use is not prohibited in the zoning district in which the subject property is located.
- 2) Mitch cited Sections 2.1.1, 2.1.3 and 2.1.7. The addition will help out with the parking issues on the lot. Matt agreed and stated that there will be more space for parking making the area safer. Marvin cited Section 2.1.12. The vote was unanimous that the variance is in harmony with the general purposes and intent of the official controls.
- 3) Matt cited Land Use Goal #4: Natural Resources. 2. Development Review: Protect the integrity of major natural resource through development review and regulation. Housing Goal #1: Housing Stock. 2. Life Cycle Housing:

Promote the improvement and maintenance of the existing housing stock to ensure that an adequate amount of housing is maintained, including retrofitting existing homes to better serve families in need of affordable housing. The plan improves the home for the future, turning the breezeway area into garage is an improvement. The vote was unanimous that the variance is consistent with the comprehensive plan.

- 4) a. Marvin stated that the addition to the house is permitted in the R-3 District. The proposed additions will not encroach into the existing setbacks. Mitch stated that the existing footprint will not change. Matt stated that there is a limited amount of space to work with. The landowner has made efforts to reduce the footprint by replacing impervious 1 to 1. 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 house was built in 1949 prior to the setback requirements outlined in the development code. The addition will make the site safer and look better. The impervious surface will not be increased. 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 plan will improve the look. Marvin stated that this will allow for indoor parking of the vehicles. The vote was unanimous that the variance will not alter the essential character of the locality.
- d. Marvin stated that the owner needs more indoor parking for cars. Impervious surface will be replaced 1 to 1. The changes to the existing home will not affect the ordinary high water mark. The vote was unanimous that the need for the variance involves more than economic considerations.

Marvin moved to add the development conditions to File #19-109. 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.

A single family dwelling is a permitted use in the R-3 Single Family Residence District and Shoreland District according to Section 7.5 and 7S5.21 of the Development Code.

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 2.1.7 To limit congestion in the public right-of-way by providing for the off-street parking and loading of motor vehicles.

The addition will be safer for passing cars and the property owner by getting the parked car out of the right-of-way.

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.

Land Use Goal #4: Natural Resources

2. Development Review: *Protect the integrity of major natural resource through development review and regulation.*

Housing Goal #1: Housing Stock

2. Life Cycle Housing: *Promote the improvement and maintenance of the existing housing stock to ensure that an adequate amount of housing is maintained, including retrofitting existing homes to better serve families in need of affordable housing.*

The plans improve the home for the future.

- 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 addition of residential space to an existing dwelling within the R-3 zoning district, where single family homes are permitted is a reasonable use. The home will not encroach any further into any of the required setbacks than its existing footprint. The owner will be removing impervious surface in order to keep the same footprint. He has limited space to work with.

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

The dwelling was constructed in 1949, prior to the setback requirements outlined in the development code. The addition will make the site safer and look better. The impervious surface will not be increased.

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

The addition improves the look. It will provide indoor parking and get the parked car out of the right-of-way.

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

The applicant is looking to add useable space to the home and allow an additional indoor space for parking a vehicle. The applicant has agreed to remove some unused impervious surface to not exceed the existing impervious surface coverage. This will be a 1:1 on impervious and does not affect the ordinary high water mark.

Development Conditions for file no. 19-109 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. A building permit shall be obtained from Watab Township. The township may also have requirements for other permits including but not limited to a land disturbance permit, that will be obtained and the applicant shall be responsible to obtain proper permits from the Township prior to the start of construction.
4. The applicant shall utilize appropriate erosion control devices to minimize runoff from the site and/or into the waterway.
5. Upon completion of the addition, pursuant to Flood Plain Ordinance No. 196, Section 10.2.6, the property owner shall be required to submit certification by a registered professional engineer, registered architect, or registered land surveyor that the finished fill and building elevations were accomplished in compliance with the provisions of this ordinance to the Benton County Department of Development. Flood-proofing measures shall be certified by a registered professional engineer or registered architect.
6. 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.

7. 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.

The motion carried to accept the findings and decision and grant File #19-109. The applicant was given a copy of the findings, conditions and decision.

- 7) Marvin stated his concern with new members getting training so they know what to expect at the meeting.

- 8) Marvin moved to adjourn at 8:50 p.m. Matt seconded and the motion carried.

Respectfully submitted,

Karen E Loehrer
Administrative Secretary