

Board of Adjustment MINUTES May 20th, 2021

PRESENT: Jane DeAustin, Dan Gottwalt, Mark Kaschmitter, Roy Schneider, Marvin Neubert

Staff: Roxanne Achman, Karen Loehrer

1. Mark called the meeting to order followed by the Pledge of Allegiance.
2. Dan moved to approve the agenda. Jane seconded and the motion carried.
3. Roy moved to approve the minutes from the April 10th meeting. Jane seconded and the motion carries.
4. File #21-169 Mitch and Sara Casper requesting a variance to construct a detached garage that would be 21ft 9in in height (maximum height allowed 20 ft) in the R-1 Residential District. Pursuant to Sections 9.1.2(C) and 11.5.1. The affected property is described as follows: Lot 3, Block 1, W L J Addition, Section 23, Watab Township.

Roxanne stated that this request is in Watab Township on Ivy Rd. The lot is .5 acre and is allowed 5% of lot area in building size with a maximum height of 20ft. The landowners will be replacing an existing structure. The request is to be 1.9ft above the height allowed. The structure will have a 10ft door requiring 12ft side walls. Roxanne stated that there is a lot in the area with a taller structure. That lot is over an acre and allowed 25ft. She showed an aerial from 2020 of Casper lot. The existing structure has been taken down and a cement slab has been poured.

Mitchell Casper, 8380 Ivy PI stated that they weren't aware of the height limit when they designed and ordered the materials. They designed the taller building for a storage area in a second

level. The building will meet all setbacks and match the house. It won't be an eyesore or block anyone's view.

No one spoke in favor, opposition or with general comments. Roxanne stated that Watab did review this request and has no issues.

Dan moved to close the public hearing. Jane seconded and the motion carried.

In reviewing Section 11.5.1 the vote was as follows:

- A) Mark stated that accessory structures are permitted in the R-1 Residential District. The vote was unanimous that the proposed use is not prohibited in the zoning district in which the subject property is located.
- B) Dan cited A and C under Section 2.1.1. The vote was unanimous that the variance is in harmony with the general purposes and intent of the official controls.
- C) Jane stated that the use is consistent. It meets the Development Review policy because the applicant is going through the process and having the project reviewed. She cited Environment & Natural Resources Goal #1 Policy #2. Development Review: Protect the integrity of major natural resources through development review and regulation. The vote was unanimous that the variance is consistent with the Comprehensive Plan.
- D)
 1. Jane stated that the property owners are proposing to use the structure for storage. The vote was unanimous that the Property Owner proposes to use the property in a reasonable manner not permitted by an official control.
 2. Marvin stated that the lot is .5 acre which allows a maximum height of 20ft. The owner designed the building at 21.9ft and ordered materials and now needs a variance. The vote was unanimous that the plight of the landowner is due to circumstances unique to the property not created by the landowner.
 3. Mark stated that the majority of accessory structures in the locality are 20 feet in height or less and do not have 10ft doors that need the higher side walls. There are trees on the lot that should visually improve the site and it shouldn't cause an issue. The vote was unanimous that the variance, if granted, will not alter the essential character of the locality.
 4. Dan stated that economic considerations are not a factor in this request. The vote was unanimous that the need for the variance involves more than economic considerations.

Marvin moved to include the development conditions to File #21-169. Jane seconded and the motion carried.

Roxanne read the findings and conditions.

- A) The proposed use is not prohibited in the zoning district in which the subject property is located.

Accessory structures are permitted in the R-1 Residential District.

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

In accordance with the following items in Section 2.1.1:

(A) To promote and protect the public health, safety, comfort, convenience, and general welfare of the people.

(C) To promote the orderly development of residential, business, industrial, recreational and public areas.

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

It is consistent with the Comprehensive Plan. It meets the Development Review policy because the applicant is going through the process and having the project reviewed.

Environment & Natural Resources

Goal #1

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

- D) The variance may be granted if there are Practical difficulties in complying with the official control:

- 1) Property Owner proposes to use the property in a reasonable manner not permitted by an official control.

Yes, the property owners are proposing to use the structure for storage.

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

The lot is approximately 0.5 acres, which allows for a maximum accessory structure height of 20 feet. The property owner found out the height was greater than 20 feet after he designed the building.

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

The majority of accessory structures in the locality are 20 feet in height or less and do not have 10ft doors that need the higher side walls. There are trees on the lot that should visually improve the site and it shouldn't cause an issue.

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

Economic considerations are not a factor in this request.

Development Conditions for File No. 21-169 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 (from Benton County) and Building Permit (from Watab Township) 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 ensure that the permit holder is in compliance with the conditions of approval and all other applicable statutes, rules and ordinances.

Dan moved to accept the findings, conditions and decision and approve File #21-169. Jane seconded and the motion carried. The applicant was given a copy of the findings, conditions and decision.

5. File #21-179 Cynthia Bemboom requesting a variance to the density calculation in the Agricultural District. Pursuant to Sections 6.4(A), 7.2 and 11.5.1. The affected property is described as follows: Part of the NE1/4 Section 9, Mayhew Lake Township.

Roxanne stated that this is a 19.83-acre parcel extending from 45th Ave to 40th Ave. This was the pastureland split off from the fields. The property is .17 short for allowing an additional dwelling. The property owner owns a 19.83-acre parcel of land that she wishes to split for the purpose of allowing for an additional dwelling to be constructed. The property is within the Agricultural District. Each density right requires a minimum of 10 acres of land for calculation purposes. Ms. Bemboom's property is short by 0.17 acres, restricting her to one dwelling right for her property. Section 6.4(A)(1) states that there shall be no more than 4 dwellings within a Quarter

Quarter section (40 acres). Allowance of one additional density would not violate this section of the development code. Roxanne showed an aerial on how the 4 dwellings per 40 acres (quarter quarter section) is not violated. There was a discussion on if this land was surveyed and if it should be surveyed.

Cynthia Bemboom, 10465 45th Ave, stated that this property was pastureland. The fence was used as the south property line. She stated that her property has been surveyed. There was a discussion of where a house would go. Roxanne stated that the wetland would have to be avoided. The new house would need to be in the NW NE quarter quarter.

Matt Jurek, 10362 40th Ave, stated he lives directly south of this property. He felt the area was getting congested with houses. He stated his concern with the value of his home decreasing. Mark asked Matt if he asked a realtor about this affecting the value of his house. Matt stated that he had not. Roy stated that there are ordinances to protect property. Matt stated that there is not enough acreage for a second dwelling. The rules are there for a reason.

Roxanne stated she received comments from Dan Bemboom opposing this request. Comments were also received from Eric Wilaby, asking about the variance process and stating their opposition to this request. Roxanne received a call from Joe Scapanski, Mayhew Lake Township board member stating that the township has no issues with this variance request.

Roxanne stated that if the variance is approved the next step would be to go through a process to split the land. Location of the house would depend on how the property is divided.

Dan moved to close the public hearing. Roy seconded and the motion carried.

In reviewing Section 11.5.1 the vote was as follows:

- A) Mark stated that single family homes are permitted in the Agricultural District at a density of four houses per 40 acres. The vote was unanimous that the proposed use is not prohibited in the zoning district in which the subject property is located.
- B) Dan cited A and C under Section 2.1.1. The vote was unanimous that the variance is in harmony with the general purposes and intent of the official controls.
- C) Roy stated that the Comprehensive Plan allows for 4 houses per 40 acres and this request stays within that. Jane cited Land Use Goal #2 Policy #5 Rural Non-Farm Housing. The vote was unanimous that the variance is consistent with the comprehensive plan.
- D) 1. Marvin stated that the property will be used for a single-family dwelling, which is permissible within the Ag District. The vote was unanimous that the Property Owner proposes to use the property in a reasonable manner not permitted by an official control.

2. Mark stated that the property is short by 0.17 acres. There is a lot of swamp in this area, but there is high ground for a home. The property was split along a fence line without consideration for a tenth of an acre. The vote was unanimous that the plight of the landowner is due to circumstances unique to the property not created by the landowner.

3. Dan stated that there are other houses in the area. The use won't change the character. The property will not be farmed. The vote was unanimous that the variance, if granted, will not alter the essential character of the locality.

4. Roy stated that it takes more than economics into consideration. The property owner is not able to obtain the acreage necessary for a second dwelling right. That is the only thing that holds up this property from splitting. The vote was unanimous that the need for the variance involves more than economic considerations.

Marvin moved to include the development conditions to File #21-179. Jane seconded and the motion carried.

Roxanne read the findings and conditions.

Findings

- A) The proposed use is not prohibited in the zoning district in which the subject property is located.

Single family homes are permitted in the Agricultural District at four houses per 40 acres.

- B) The variance must be in harmony with the general purposes and intent of the official controls.

In accordance with the following items in Section 2.1.1:

(A) To promote and protect the public health, safety, comfort, convenience, and general welfare of the people.

(C) To promote the orderly development of residential, business, industrial, recreational and public areas.

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

The Comprehensive Plan allows for 4 houses per 40 acres and this request stays within that.

Land Use

Goal #2

Policy #5 Rural Non-Farm Housing: Allow additional rural non-farm housing so owners can extract some equity from their property, while sustaining

agricultural operations on their land and their neighbors'. Seek creative solutions to the tension between preservation and development by using techniques such as clustering and transfer or sale of development rights.

- D) The variance may be granted if there are Practical difficulties in complying with the official control:
- 1) Property Owner proposes to use the property in a reasonable manner not permitted by an official control.

The property will be used for a single family dwelling, which is permissible within the Ag District.

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

The property is short by 0.17 acres. There is a lot of swamp in this area, but there is high ground for a home. The property was split along a fence line without consideration for a tenth of an acre.

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

It will not. There are already homes in this area and they are not necessarily farming.

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

It takes more than economics into consideration. The property owner is not able to obtain the acreage necessary for a second dwelling right. That is the only thing that holds up this property from splitting.

Development Conditions for file no. 21-179 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 (from Benton County) and Building Permit (from Watab Township) 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 ensure that the permit holder is in compliance with the conditions of approval and all other applicable statutes, rules and ordinances.
5. The dwelling shall be placed within the NW1/4 NE1/4, Section 9, Mayhew Lake Township.

Marvin moved to accept the findings and conditions and approve File #21-179. Dan seconded and the motion carried. The applicant was given a copy of the findings, conditions and decision.

6. Dan moved to adjourn at 8:13 p.m. Roy seconded and the motion carried.

Respectfully submitted,

Karen E. Loehrer
Administrative Secretary