

# **Board of Adjustment MINUTES June 20<sup>th</sup>, 2019**

PRESENT: Mitch Czech, Marvin Neubert, Jane DeAustin, Mark Kaschmitter

Staff: Roxanne Achman, Karen Loehrer

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- 1) Mitch called the meeting to order followed by the Pledge of Allegiance.
- 2) Marvin moved to approve the agenda. Jane seconded and the motion carried.
- 3) Marvin moved to approve the minutes from the May 16<sup>th</sup>, 2019 meeting. Mitch seconded. Jane abstained. The motion carried.
- 4) 7:05 p.m. File #19-167, Dale Vannurden and Allen Vannurden requesting a variance to allow a feedlot that is 534ft from a non-feedlot residence (660ft required), 100ft from an existing feedlot (660ft required) and has a feedlot structure 48ft from a property line (80ft required) in the Agricultural District. Pursuant to Sections 9.14.3 and 11.5.1. The affected property is described as follows: NW1/4 and part of the SW1/4, Section 19, Graham Township.

The on-site visit was done by Mitch, Marvin and Jane at 1:25 with Roxanne. Mark visited the site in the morning.

Roxanne stated that the property is in Graham Twp on CR 78. The applicant's own a majority of the property in this area. The request is allow for a "second feedlot" in this area. Tier I feedlots are a permitted use. Tier I is less than 1000 animal units. The applicants have a permit through the MPCA for this feedlot. The feedlot is on parcels 04.00168.00 and 04.00173.00. The request is to split off the buildings on the southern property to allow for a separate Tier I feedlot on that property. The lot needs to be under separate ownership for a separate MPCA permit as a Tier I feedlot. If the properties were in the same ownership it would be considered a contiguous lot and any increase of animal units would require a higher permitting from the MPCA and a conditional use permit for a Tier II feedlot. To allow the continuation of

this southern part as a separate feedlot there needs to be variances; for a feedlot structure from a non-feedlot residence, a feedlot structure from the property line and a feedlot from another feedlot. This request would allow for two Tier I feedlots side by side. She spoke with the MPCA on what it would take to move to the Tier II. This would be an expensive process and require the site to have zero discharge which would have a significant cost. A higher Tier would require more regulation and be cleaner. With manure management and best management plans there should be no issues with these sites. Marvin asked how old the buildings were and when they were placed. Shaun Vannurden stated that the buildings are 35-40 years old. Jane asked if there were any comments from the township. Roxanne stated that no comments were received from the township.

Jeff Bauman, Anez Consulting, 1700 Technology Dr NE, Suite 130, Willmar MN, stated that the request will allow the next generation of farm. There is a manure management plan in place. The permits have been submitted to MPCA. There is sufficient acreage for both feedlots. Mitch asked how much manure is being stored. Shaun stated that they have manure storage for one month. Mitch stated that even if the lots are separated that whole site will be serviced as one.

Allen Vannurden stated that this feedlot will be separate from the dairy. Jane asked about the manure management. Allen stated that they will be stacking the manure in the field. There will be no liquid. Mark stated that the applicant is trying to get his son started. He felt this is in harmony with the area.

Shaun Vannurden read a letter in favor from Barb Torres, who is the nearest neighbor.

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

In reviewing Section 11.5.1, for the variance to allow a feedlot that is 534ft from a non-feedlot residence, the vote was as follows:

- 1) Marvin stated that Tier I feedlots are a permitted use in the Ag District when following the setbacks. Mitch stated that this is a huge site without a lot of manure management. The vote was unanimous that the proposed use is not prohibited in the zoning district in which the subject property is located.
- 2) Jane cited Sections 2.1.3 and stated this is Ag, within Ag staying with Ag. She added 2.1.9. Marvin cited 2.1.12. The vote was unanimous that the variance is in harmony with the general purposes and intent of the official controls.
- 3) Mark cited Land Use Goal #2 Rural Land Use, Policy #11 Right to Farm. Mitch added Policy #2 Agriculture. The vote was unanimous that the that the variance is consistent with the Comprehensive Plan.
- 4) a. Mitch stated that the variance gets the son into farming and makes the operation feasible. Mark stated that there are structures there and the proposed structures are in harmony with the farm. 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 said that the feedlots have been in existence for a long time. Mitch stated that they are going through the variance process to make this work.

The vote was unanimous that the plight of the landowner is due to circumstances unique to the property not created by the landowner.

c. Jane stated that the feedlot is in harmony with what's existing on the site. The vote was unanimous that the variance, if granted, will not alter the essential character of the locality.

d. Mark stated that the purpose is to stay a Tier I feedlot. This is cost effective and allows for the next generation to farm. The vote was unanimous that the need for the variance involves more than economic considerations.

Mitch moved to include the development conditions to File #19-167. Marvin 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.

*Tier I feedlots are a permitted use in the Ag District when following the setbacks.*

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

Section 2.1.9 To preserve a maximum amount of the prime agricultural land for the assurance of adequate, healthful and nutritious food for future residents of the state and nation.

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 #2 Rural Land Use

**Policy #2 Agriculture:** Recognize and support the agricultural practices, character and lifestyle within the County, allowing for the pursuit of agriculture as a career.

**Policy #11 Right to Farm:** Support a farmer's right to farm when they are using generally accepted farming 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 variance gets the son into farming and makes the operation feasible.*

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

*The feedlot has existed for many years. They are going through the process to make it work.*

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

*The feedlot is in harmony with what's existing on the site.*

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

*The purpose is to stay as a Tier I feedlot. This is cost effective and allows the next generation to farm.*

*Development Conditions for File No. 19-167 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 (if required) 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 statutes, rules and ordinances.
5. All required permits through the MPCA shall be obtained.

Marvin moved to accept the findings and conditions and grant File #19-167 to allow a feedlot that is 534ft from a non-feedlot residence. Mark seconded and the motion carried.

In reviewing Section 11.5.1 for a variance to allow a feedlot 100ft from an existing feedlot, the vote was as follows:

- 1) Mitch stated that Tier I feedlots are permitted in the Ag District. This will allow the next generation to step in and take over. 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. Jane added Section 2.1.9. The vote was unanimous that the variance is in harmony with the general purposes and intent of the official controls.
- 3) Jane cited Policies 2 and 11 under Land Use Goal #2 Rural Land Use. The vote was unanimous that the variance is consistent with the Comprehensive Plan.
- 4) a. Mark stated that this is a Tier I feedlot. The vote was unanimous that the Property Owner proposes to use the property in a reasonable manner not permitted by an official control.  
b. Mitch stated that the applicants are splitting the site to make it feasible for the younger generation to farm. Hopefully the younger generation will do the right thing environmentally. 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 stated that this is an existing feedlot. The site is off the road. This will be a good fit to the area. The vote was unanimous that the variance, if granted, will not alter the essential character of the locality.  
d. Jane stated that it does when talking about the next generation farming. The vote was unanimous that the need for the variance involves more than economic considerations.

Marvin moved to include the development conditions to File #19-167. Jane 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.

*Tier I feedlots are a permitted use in the Ag District. Allows the next generation to step in and take over.*

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 2.1.9 To preserve a maximum amount of the prime agricultural land for the assurance of adequate, healthful and nutritious food for future residents of the state and nation.

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 #2 Rural Land Use

**Policy #2 Agriculture:** Recognize and support the agricultural practices, character and lifestyle within the County, allowing for the pursuit of agriculture as a career.

**Policy #11 Right to Farm:** Support a farmer's right to farm when they are using generally accepted farming 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.

*This is a Tier I feedlot.*

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

*They are splitting the site to make it feasible to operate. Hopefully the younger generation will do the right thing environmentally.*

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

*It won't affect the character of the area. It's an existing feedlot and is setback a ways from the road.*

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

*Yes it does when you talk about new generations farming.*

*Development conditions for File No. 19-167 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 (if required) 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 statutes, rules and ordinances.

5. All required permits through the MPCA shall be obtained.

Mark moved to accept the findings and conditions and grant File #19-167 to allow a feedlot 100ft from an existing feedlot. Jane seconded and the motion carried.

In reviewing Section 11.5.1 for a variance to allow a feedlot structure 48ft from a property line, the vote was as follows:

- 1) Mark stated that this is an existing feedlot. 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 Section 2.1.9, 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 stated that the site is planned agricultural. He cited Land Use Goal #2 Rural Land Use Policies #2 Agriculture and #11 Right to Farm. The vote was unanimous that the variance is consistent with the comprehensive plan.
- 4) a. Jane stated that this is a Tier I feedlot on a large site. Its fits the area. The vote was unanimous that the Property Owner proposes to use the property in a reasonable manner not permitted by an official control.  
b. Mark stated that this is a Tier I feedlot being passed to the next generation. The vote was unanimous that the plight of the landowner is due to circumstances unique to the property not created by the landowner.  
c. Mitch stated that the site is setback and not really noticeable from the road. The vote was unanimous that the variance, if granted, will not alter the essential character of the locality.  
d. Marvin stated that this allows for the next generation to get started. Keeping the Tier I keeps them from a high financial burden of Tier II. The vote was unanimous that the need for the variance involves more than economic considerations.

Mitch moved to include the development conditions to File #19-167. Jane 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.

*It's an existing Tier I feedlot.*

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

Section 2.1.9 To preserve a maximum amount of the prime agricultural land for the assurance of adequate, healthful and nutritious food for future residents of the state and nation.

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

**Land Use**

Goal #2 Rural Land Use

**Policy #2 Agriculture:** Recognize and support the agricultural practices, character and lifestyle within the County, allowing for the pursuit of agriculture as a career.

**Policy #11 Right to Farm:** Support a farmer's right to farm when they are using generally accepted farming 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.

*This is a large site. It's a Tier I feedlot and fits the area.*

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

*This is a Tier I feedlot being passed to the next generation.*

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

*It is setback and not really noticeable from the road.*

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

*This allows for the next generation to get started and keeps them out of the high financial burden of a Tier II feedlot.*

*The Development Conditions for File No.19-167 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 (if required) 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 statutes, rules and ordinances.
5. All required permits through the MPCA shall be obtained.

Marvin moved to accept the findings and conditions and grant File #19-167 to allow a feedlot structure 48ft from a property line. Mark seconded and the motion carried. The applicant was given a copy of the findings, conditions and decision.

- 5) 8:00 p.m. File #19-184, Daniel Jurkovics requesting a variance to expand an existing legal non-conforming house that is 47ft from the road (63ft required) and 60ft from the ordinary high water mark (100ft required) in the R-2 Residential District. Pursuant to Sections 7.4.3(e), 7S5.21, 7S6.1 and 11.5.1. The property is described as follows: Lot 17, Oehrlein's Point, Section 11, Watab Township.

The on-site visit was done by Mitch, Marvin and Jane at 1:50 with Roxanne. Mark visited the site in the morning.

Roxanne stated that this property is on Little Rock Lake off of Sharon Place. The request is to expand a legal non-conforming structure. A legal non-conforming structure is one that existed prior to the Development Code. This house was placed prior to 1978. It doesn't meet the setbacks to the road and the ordinary high water mark. To expand a legal non-conforming structure requires a variance. The expansion will be going up. The plan is to add floodproofing to the home and an additional story. The structure will be below the height maximum in the shoreland

district. If the variance is approved a conditional use permit is needed for an alternative flood proofing method.

Daniel, 10060 Sharon Place NW, stated that he is asking for a variance to raise the house above the flood level and add another story to expand the living space.

Todd Waytashek, Watab Township, stated that the Township is in support of this request. This will add space to the house and get the house above of the floodplain.

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

In reviewing Section 11.5.1 the vote was as follows:

- 1) Mitch stated that houses are permitted in the R-2 Residential District and in the Shoreland 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 Sections 2.1.1, 2.1.3 and 2.1.6. Mitch added Section 2.1.13. The vote was unanimous that the variance is in harmony with the general purposes and intent of the official controls.
- 3) Jane stated that the site is planned Rural Residential it will remain Rural Residential. She cited Quality of Life Goal #2, Policy #2. Life Cycle Housing and Environment & Natural Resources Goal #1. Policy #2. Development Review. The vote was unanimous that the variance is consistent with the comprehensive plan.
- 4) a. Mark stated that the applicant will continue to use the structure as a 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. Mitch stated that the home is within the floodplain and shoreland district. It was constructed and platted prior to the requirements. It will better the site. The township had no issues with the request. 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 stated that it will not alter the footprint. They are increasing the height and putting in flood control. It will be an improvement to the surrounding land owners. The vote was unanimous that the variance, if granted, will not alter the essential character of the locality.  
d. Jane stated that the decision to add a level to the home caused the need to flood proof the home, which is an improvement for the property owner and the lake. The vote was unanimous that the need for the variance involves more than economic considerations.

Mitch moved to add the development conditions to File #19-184. Marvin 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.

*Houses are permitted in the R-2 Residential District and in the Shoreland 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 2.1.6 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.

Section 2.1.13 To avoid the creation of substandard lots whereby uniform setback requirements cannot be complied with.

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

*This site is planned Rural Residential. These areas are not expected to be annexed into the City.*

### **Quality of Life**

Goal #2

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

### **Environment & Natural Resources**

Goal #1

**Policy #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.

*The applicant will continue to use the structure as a home.*

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

*The home is within the floodplain and shoreland district. It was constructed and platted prior to the requirements. It will better the site. The township had no issues with the request.*

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

*It will not alter the footprint. They are increasing the height and putting in flood control. It will be an improvement to the surrounding land owners.*

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

*The decision to add a level to the home caused the need to flood proof the home, which is an improvement for the property owner and the lake.*

The Development Conditions for File No. 19-184 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. The applicant shall apply for a Conditional Use Permit to raise the structure to meet the flood proofing requirements as outline in Benton County Ordinance #196 Flood Plain Management, and receive approval by the Benton County Planning Commission prior to applying for any land use permits or building permits.
3. A Land Use and Building Permit (if required) shall be obtained prior to any construction and shall be consistent with the plans and specifications submitted with the variance application.
4. A building permit must be obtained from Watab Township prior to any construction.
5. 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.

6. 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.

Jane moved to accept the findings and conditions and grant File #19-184. Mark seconded and the motion carried. The applicant was given a copy of the findings, conditions and decision.

- 6) Jane moved to adjourn at 8:18 p.m. Mark seconded and the motion carried.

Respectfully submitted,

Karen E Loehrer  
Administrative Secretary