

# **Board of Adjustment MINUTES August 20, 2020**

PRESENT: Matt Marx, Marvin Neubert, Jane DeAustin

Staff: Roxanne Achman

1. Jane called the meeting to order followed by the Pledge of Allegiance.
2. Matt moved to approve the agenda. Marvin seconded and the motion carried.
3. Marvin moved to approve the minutes from the July 16<sup>th</sup>, 2020. Matt seconded and the motion carried.
4. File #20-429, Kenneth Freese requesting to construct a storage building 5ft from the property line (15ft required) in the Agricultural District. Pursuant to Sections 7.2.6(B)(1)(c)(i) and 11.5. The affected property is described as follows: E677.95 ft. of S412.18 ft. of NE1/4 SE1/4, Section 36, Watab Township.

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

Roxanne stated that this request is by Ken Freese, Land Concepts a landscaping business which received a conditional use permit. In June Mr. Freese amended his CUP to add a 60'x160 storage structure for the storage of equipment related to the landscaping business. The site is fairly restricted by the amount of wetlands that surround it. The request is the place the structure 5ft from the southern property line, 15ft required. She showed a site plan. She pointed out the septic location which also limits the location for the structure. Watab Twp had no concerns with this request.

Ken Freese, 5767 Mayhew Lake Rd NE, stated he is requesting this variance because there is limited space on the lot and for better access to the overhead doors.

Karen Fouquette, 5673 Mayhew Lake Rd NE, property owner to south, stated that they have no concerns with the structure being 5ft from the property line.

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

In reviewing Section 11.5 the vote was as follows:

- A. Jane stated that storage structures are permitted in the Ag District. There is a 15ft side yard requirement. The vote was unanimous that the proposed use is not prohibited in the zoning district in which the subject property is located.
- B. Matt cited C and I. Jane added B. The vote was unanimous that the variance is in harmony with the general purposes and intent of the official controls.
- C. Marvin cited Economic Development Goal #1 Resources Policies #2 & #6. The vote was unanimous that the variance is consistent with the comprehensive plan.
- D. 1) Jane stated yes, it is reasonable to reduce the setback. The vote was unanimous that the Property Owner proposes to use the property in a reasonable manner not permitted by an official control.  
2) Matt stated that this is true. The property is surrounded by wetlands and the septic location reduces the useable area and makes it hard to move equipment. The vote was unanimous that the plight of the landowner is due to circumstances unique to the property not created by the landowner.  
3) Marvin stated that the use will not change the area. It will help get the equipment in storage. The south side of the property, where the setback would be reduced, is heavily screened by vegetation. The vote was unanimous that the variance, if granted, will not alter the essential character of the locality.  
4) Matt stated that with the equipment being stored inside it will have a neater appearance. Marvin stated that the variance does not take economics into consideration. Jane stated that the wetlands and septic location make it difficult to move construction equipment. The vote was unanimous that the need for the variance involves more than economic consideration.

Marvin added the development conditions to File #20-429.

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.

*Storage structures are permitted in the Ag District. There is 15ft side yard setback requirement for accessory buildings.*

- 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:

(B) To divide the unincorporated areas of the county into zones and districts restricting and regulating therein the location, construction, reconstruction, alteration, and the use of structures and land.

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

(I) 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.

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

**Economic Development**

Goal #1 Resources

**Policy #2. Business Retention:** Continue to support efforts to retain and expand existing businesses.

**Policy #6. Entrepreneurship:** Support entrepreneurship through small business retention and expansion, and home based occupations that are not in conflict with the Benton County Development Code.

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, it is reasonable to reduce the setback.*

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

*True. The property is surrounded by wetlands and the septic location reduces the useable area and makes it hard to move equipment.*

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

*It will not change the area. It will help get the equipment in storage. The south side of the property, where the setback would be reduced, is heavily screened by vegetation.*

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

*The variance will provide a neater appearance. A variance does not take economics into consideration.*

*The conditions for file no 20-429 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 statues, rules and ordinances.
5. This variance is granted solely for the storage structure. Any other structure placed on the lot must meet the required setbacks.

Marvin moved to accept the findings and conditions and grant File #20-429. Matt seconded and the motion carried. The applicant was given a copy of the findings and decision.

5. File #20-427, Todd and Amanda Moen requesting a variance to allow 31.5% impervious surface (25% allowed) in the R-3 Residential District. Pursuant to Sections 7.6.6(B)(3) and 11.5. The affected property is described as follows: Lot 5, Block 4, Oak Hill Estates, Section 23, Watab Township.

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

Roxanne stated that this property is located in Oak Hill Estates. The request is for 31.5% impervious surface where 25% is allowed in all residential districts. The reason for the variance is to allow a pool with a concrete skirting around it. The lot is 22,000sf. The current impervious surface, without the pool is 22.4%. The pool will meet all setbacks. She showed a survey, which gives the exact calculations with the purposed impervious surface. The proposed pool is 800sf and the skirting is 1,218sf. Installing just the pool increases the impervious surface to 26% with the concrete skirting bringing the total impervious surface to 31.5%. A letter from the Homeowners Association was submitted in favor of this request. Marvin asked if there was another type of material for the skirting that wouldn't count towards impervious surface. Roxanne stated that Benton County doesn't have any calculations for use of less impervious materials, it's not known how well they work.

Amanda and Todd Moen, 153 85<sup>th</sup> St NE, Rice, stated that they are requesting a variance to install a pool. They believe the pool will enhance the site and is in harmony with the neighborhood. There will be a hard, retractable cover. Matt asked about fencing. Amanda said the fence would be 4ft rod iron.

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

In reviewing Section 11.5 the vote was as follows:

- A. Marvin stated that pools and impervious surfaces are allowed in the R-3 district and impervious surfaces are limited to 25% of the total lot coverage as indicated in Section 7.6.6(B)(3). The vote was unanimous that the proposed use is not prohibited in the zoning district in which the subject property is located.
- B. Matt cited A & C under Section 2.1.1. Jane added B. The vote was unanimous that the variance is in harmony with the general purposes and intent of the official controls.
- C. Jane cited Quality of Life Goal #2. Policy #2. Life Cycle Housing and Environment & Natural Resources Goal #1: Stewardship. Policy #2. Development Review. The vote was unanimous that the variance is consistent with the comprehensive plan.
- D. 1) Marvin stated that pools are permitted in the R-3 District. Jane stated that the increase in impervious surface is reasonable due to the sandy soils. The vote was unanimous that the Property Owner proposes to use the property in a reasonable manner not permitted by an official control.

- 2) Matt stated that the lot area is limited making it difficult to install the pool without 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) Jane stated that the neighborhood is essentially single family residential. This will not alter the character of the neighborhood. Marvin stated that the lot is surrounded by trees, screening the site from the neighbors. The area has sandy soils which will not create any drainage issues. The vote was unanimous that the variance, if granted, will not alter the essential character of the locality.
- 4) Marvin 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 added the development conditions to File #20-427.

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.

*Swimming pools and impervious surfaces are allowed in the R-3 district and impervious surfaces are limited to 25% of the total lot coverage as indicated in Section 7.6.6(B)(3).*

- 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.

(B) To divide the unincorporated areas of the county into zones and districts restricting and regulating therein the location, construction, reconstruction, alteration, and the use of structures and land.

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

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

**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: Stewardship

**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.

*Pools are permitted in the R-3 District. The increase in impervious surface is reasonable due to the sandy soils.*

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

*Due to the size of the lots, development may be limited without a variance.*

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

*The neighborhood or locality is single family residential. It will not alter the character of the neighborhood. The lot is surrounded by trees and it is out of the site of the neighbors. The area has sandy soils and drainage should be no issue.*

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

*Economic considerations are not a factor in this request.*

*The development conditions for file no. 20-427 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.

Jane moved to accept the findings and decision and grant File #20-427. Matt seconded and the motion carried. The applicant was given a copy of the findings and decision.

6. File #20-401, David and Dawn Lerch requesting a variance to construct an accessory structure that would be 9ft from the right of way of a township road (30ft required) in the R-3 Residential District. Pursuant to Sections 7.6.6(B)(1)(a) and 11.5. The affected property is described as follows: Lots 23 & 24, Ferry Point Addition, Section 8, Watab Township.

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

Roxanne stated that this request is in Watab Twp on Ferry Point Place. This area was platted in 1961, prior to the Development Code being adopted in 1978. The home was constructed in 1998. The loop of Ferry Point Place was never completed. The property to the south and east of the house is sloped. The request is for an accessory structure 9ft from the right of way where 30ft is required. Based on today's visit there are no immediate plans for the installation of a township road. Any installation would be at the expense of the property owners benefiting from it. The township has no intention of installing this road. Other locations on the lots are sloped. Storage structures are not permitted within the front yard in residential districts. The front yard of shoreland lots is the side facing the water body.

Over the phone, David Lerch, 10215 Ferry Pt, stated that they are requesting a variance because no structures can be place in the front yard, river side. There is a



steep slope on the south of the house. The proposed structure is 12'x20' shed on the east side of the garage at a 9ft setback from an unconstructed road. The shed will match the house. This is the only location on the property.

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

In reviewing Section 11.5, the vote was as follows

- A. Jane stated that storage structures are a permitted use in the R-3 district subject to setback requirements. The vote was unanimous that the proposed use is not prohibited in the zoning district in which the subject property is located.
- B. Marvin cited A, C and L under Section 2.1.1. Matt added M. The vote was unanimous that the variance is in harmony with the general purposes and intent of the official controls.
- C. Matt cited Quality of Life Goal #2. Policy #2. Life Cycle Housing. The vote was unanimous that the variance is consistent with the comprehensive plan.
- D. 1) Jane stated that in this case the 9ft from the right-of-way is reasonable for a 12'x20' storage shed. Marvin stated that storage structures are permitted in the R-3 District as long as they meet the setbacks. 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 property was platted in 1961 before adoption of the Development Code in 1978. The land drops off sharply to the east and south making this the only location for the structure. The township road was never built. The vote was unanimous that the plight of the landowner is due to circumstances unique to the property not created by the landowner.  
3) Jane stated that due to the road ending at the Lerch driveway, the storage structure will appear to be in the side yard and not encroaching upon right-of-way. The vote was unanimous that the variance, if granted, will not alter the essential character of the locality.  
4) Matt stated that due to the topography of the land and the existence of the unconstructed road the variance is needed. The vote was unanimous that the need for the variance involves more than economic considerations.

Matt added the development conditions to File #20-401.

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.

*Storage structures are a permitted use in the R-3 District subject to the setback requirements.*

- 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.

(L) To further the appropriate use of land, and conserve and protect the natural resources of the county for present and future generations.

(M) To avoid the creation of substandard lots whereby uniform setback requirements cannot be complied with.

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

**Quality of Life**

Goal #2: Housing Stock

**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.

- 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.

*9ft from the right-of-way of a township road for a 12x20 storage structure is reasonable. An accessory structure is permitted in the R-3 District.*

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

*The property was platted in 1961, prior to the adoption of the development code in 1978. The township road was never built. The land drops sharply to the south and east. This is the only location with reasonable access to it.*

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

*Due to the road ending at the Lerch driveway, the storage structure will appear to be in the side yard and not encroaching upon right-of-way.*

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

*A variance is needed due to the topography of the land and the existence of an unconstructed roadway.*

*Development conditions for file no. 20-401 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. This variance is granted solely for the storage structure. Any other structure placed on the lot must meet the required setbacks.

Marvin moved to accept the findings and conditions and grant File #20-401. Matt seconded and the motion carried. The variance was granted.

7. Marvin asked about what is considered impervious surface. He questioned if a gravel driveway should be considered impervious.

8. Matt moved to adjourn at 8:00 p.m. Jane seconded and the motion carried.

Respectfully submitted,

Karen E Loehrer  
Administrative Secretary  
(prepared from audio)