

**Board of Adjustment  
MINUTES  
September 17<sup>th</sup>, 2020**

PRESENT: Dan Gottwalt, Matt Marx, Jane DeAustin, Mark Kaschmitter, Marvin Neubert

Staff: Sean Moe, Karen Loehrer

1. Mark called the meeting to order followed by the Pledge of Allegiance.
2. The agenda was approved.
3. Marvin moved to approve the minutes from the August 20<sup>th</sup> 2020 meeting. Matt seconded and the motion carried.
4. File #20-502, Jeff and Amber Roske requesting variance to construct a feedlot 170ft from a water course (300ft required) in the Agricultural District. Pursuant to Sections 9.12.3 and 11.5. The affected property is described as follows: W1/2 NE1/4 less W230ft of N125th, Section 13, Maywood Township.

Sean stated that the property owners are proposing to place a 60' x 624' chicken barn 170ft from a water course, where 300ft is required. The barn will be placed northwest of an existing barn. The proposed structure needs to be in this location due to wetlands to the east and a private drainage ditch to the west. The property owner is proposing to tile the private drainage ditch to eliminate the necessary setback from it. However, the ditch extends to the north property, which eventually empties into a public water course. The 170ft setback request is from the front corner of the structure to the ditch north of 95<sup>th</sup> St NE. The existing chicken barn received a variance to be 135ft from a water course in 2015. That water course is proposed to be tiled. The feedlot has an existing variance to be 275ft from a non-feedlot residence.

Jeff Roske stated that they are requesting a variance for a feedlot to be 170ft from a watercourse. The barn can't be moved to the south due to the wetlands. He stated that with the tile the water is less likely to run into the ditch. There will be no surface runoff.

Sean stated that he spoke with Mark McNamara, Wetland Lead, regarding the tiling. He stated that replacing the ditch with 8" perforated draintile will decrease the drainage flow.

No one spoke in favor, opposition or with general comments.

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

In reviewing Section 11.5 the vote was as follows:

- A. Mark stated that feedlot structures are permitted in the agricultural district. 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, I & L 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 cited Land Use Goal #2: Rural Land Use. Policy #2. Agricultural and Policy #11. Right to Farm. Environment & Natural Resources Goal #3: Water Resources. Policy #1. Best Management Practices. The vote was unanimous that the variance is consistent with the comprehensive plan.
- D. 1) Dan stated that the use of the property will remain the same. Marvin stated that feedlot structures are permitted in the agricultural 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) Matt stated that the property is constricted by wetlands and drainage ditches making it difficult to place anywhere else. 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 area will be used for a chicken barn. The vote was unanimous that the variance, if granted, will not alter the essential character of the locality.  
4) Marvin stated that the variance will protect the wetlands and be an efficient use of the land. The vote was unanimous that the need for the variance involves more than economic considerations.

Marvin moved to add the development conditions to File #20-502. Dan seconded and the motion carried.

Sean read the findings and conditions.

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

*Feedlot structures are permitted in the Ag 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.

(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.

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

- C) 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.

**Environment & Natural Resources**

Goal #3: Water Resources

**Policy #1. Best Management Practices:** Protect water quality by encouraging the use of "Best Management Practices" and other features of the County's Water Plan in private development and public improvements.

- 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 use of the property will remain the same. Feedlot structures are permitted in the Ag zoning district.*

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

*The property is constricted by wetlands for drainage, which makes it difficult to place the barn anywhere else.*

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

*This area is zoned agricultural and is being used for agricultural purposes.*

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

*A variance allows for more efficient use of the property. Which will also protect the existing wetlands.*

*Development Conditions for file no. 20-502 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 (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 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 structure referenced in this variance request. Any other structure placed on the lot must meet the required setbacks.

Jane moved to accept the findings and conditions and grant File #20-502. Matt seconded and the motion carried. The applicant was given a copy of the findings and decision.

5. File #20-507, Gary Scapanski and Tom Scapanski requesting a variance to construct a livestock waste storage facility 500ft from a non-feedlot residence (660ft required) in the Agricultural District. Pursuant to Sections 9.12.3 and 11.5. The affected property is described as follows: part of E1/2 NE1/4, Section 17, Gilmanton Township.

Sean stated that the applicants are requesting to construct a 252ft x 362ft livestock waste facility 500ft from a non-feedlot residence. That applicants report and plans indicate that the proposed location is the appropriate elevation to collect all runoff as required by the MPCA. The proposed manure pit will be HDPE lined and replace the existing earthen-lined pit. The purpose of the proposed pit is to eliminate feedlot runoff. A conditional use permit (CUP) will be required for the construction of the livestock waste facility. The property owners have submitted the application. Should the variance be approved, the Planning Commission will review and act upon the CUP on September 24, 2020. Marvin asked when the house across the street was constructed.

Patrick Scapanski stated that the house across the street is the original farmstead from the 70's. Gary stated that the existing pit was built in the 70's. Patrick stated that they sent out a good neighbor notice. The proposed livestock waste storage facility is to contain the runoff from the open lots to the north and control the waste from the barns. The water runoff from the feed storage area and silage bags will be contained in a grass filter strip. There is a wetland south. They are working with SWCD.

Brenda Berkebile commented on-line that she is in favor.

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

In reviewing Section 11.5 the vote was as follows:

- A) Mark stated that livestock waste storage facilities are permitted in the Agricultural District with a conditional use permit. 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, I, and L 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 cited Land Use Goal #2: Rural Land Use. Policy #2. Agriculture and Policy #11. Right of Farm. Environment & Natural Resources Goal #3: Water Resources Policy #1. Best Management Practices. The vote was unanimous that the variance is consistent with the comprehensive plan.

- D) 1. Matt stated that the use of the property will remain the same. Manure storage pits are permitted in the agricultural 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. Dan stated that the topography of the area indicates that this location provides the best location to collect feedlot runoff. 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 livestock waste facilities are a permitted use by conditional use permit within the agricultural district. The vote was unanimous that the variance, if granted, will not alter the essential character of the locality.
4. Marvin stated that a variance is needed to install a new livestock waste facility. The elevation of the location is best situated to address feedlot runoff. Matt stated that the old pit is at capacity. The new pit will allow for future expansion and eliminate additional work at key times of the year. The vote was unanimous that the need for the variance involves more than economic considerations.

Marvin moved to add the development conditions to File #20-507. Jane seconded and the motion carried.

Sean read the findings and conditions.

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

*Livestock waste storage facilities are permitted in the Agricultural District with a conditional use permit.*

- 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.

(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.

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

C) 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.

**Environment & Natural Resources**

Goal #3: Water Resources

**Policy #1. Best Management Practices:** Protect water quality by encouraging the use of "Best Management Practices" and other features of the County's Water Plan in private development and public improvements.

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 use of the property will remain the same. Manure storage pits are permitted in the ag district.*

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

*The topography of the area indicates that this location provides the best location to collect feedlot runoff.*

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

*Livestock waste facilities are a permitted use by conditional use permit within the Ag District.*

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

*The variance is needed to locate the facility at an elevation best situated to address feedlot runoff. The old manure pit will be removed and the new manure pit will allow for better dairy operation.*

*Development Conditions for file no. 20-507 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 conditional use permit must be obtained prior to construction.
3. A Land Use (from Benton County) and Building Permit (if necessary) shall be obtained prior to any construction and shall be consistent with the plans and specifications submitted with the variance application.
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 ensure that the permit holder is in compliance with the conditions of approval and all other applicable statues, rules and ordinances.
6. This variance is granted solely for the livestock waste storage facility described in this variance request. Any other structure placed on the lot must meet the required setbacks.

Marvin moved to accept the findings and conditions and grant File #20-507. Jane seconded and the motion carried. The applicant was given a copy of the findings and decision.

6. File #20-493, Richard and Tina Anderson requesting a variance to construct an accessory structure that would be 12ft from the right of way of a principle arterial



road (Hwy 10) (100ft required) in the R-2 Residential District. Pursuant to Sections 7.5.6(B)(1)(a) and 11.5. The affected property is described as follows: part of the NW1/4 SE1/4, Section 10, Watab Township.

Sean stated that the existing dwelling was constructed around 1979. At that time, the setback was only considered from front and side yards. In 1986, a building permit was issued to reconstruct the home that was destroyed by a fire. The setback from the rear property line (Hwy 10 right-of-way) was 30ft. In 2006, a variance was granted to add a garage onto the nonconforming home. The attached back deck of the home was 13ft from the right-of-way of Hwy 10. There are two dwellings on this property. Records are unclear on when the mobile home was placed on the lot. Records do indicate that in September 1978, the property owner did apply for a variance to divide the lot into two nonconforming parcels so that each dwelling was on its own lot. The variance was approved but never recorded due to the property owner not submitting a certificate of survey, additionally, new deeds were not recorded. Properties along this stretch of Highway 10 between 105<sup>th</sup> St NW and the southern entrance of West Lake Road notoriously have setback issues due to their proximity to Highway 10 and due to being platted prior to the development code being adopted in 1978. The setback from Highway 10 ROW is 100ft. The setback from township road ROW is 30ft. He showed an aerial photo of the property showing the area of the lot that meets the setbacks and the area where the setbacks overlap. To add to the complications, accessory structures may not be located closer to the front lot line than the dwelling.

Richard Anderson, 9929 West Lake Rd NW, stated that they are requesting a variance for a shed. Matt asked about the location of the shed. Richard stated that the shed will be in line with the existing house. He stated that he would like to clean up the lot and protect his things from theft. No one lives in the trailer. Sean stated that there were no comments from Watab Twp. The setback to the septic from the shed is 5ft.

No one spoke in favor, opposition or with general comments.

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

In reviewing Section 11.5 the vote was as follows:

- A) Mark stated that storage structures are a permitted use in the R-2 District according to Section 7.5 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.
- B) Marvin cited A & C under Section 2.1.1. Matt added "M" and 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 Cycling Housing. The vote was unanimous that the variance is consistent with the comprehensive plan.
- D) 1. Dan stated that the use of the property is not changing. Storage structures are permitted in the R-2 District and will help clean up the parcel. 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 it is difficult, if not impossible to meet the setbacks to the roads. 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 storage structures are a permitted use in the R-2 District and it is unlikely that it will have any effect on the character of the locality and will help keep the parcel clean. The vote was unanimous that the variance, if granted, will not alter the essential character of the locality.
- 4. Marvin stated that a new storage structure will help to secure personal items from being stolen. Economics are not a factor in this variance request. The vote was unanimous that the need for the variance involves more than economic considerations.

Marvin moved to add the development conditions to File #20-493. Jane seconded and the motion carried.

Sean 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-2, Residential District according to Section 7.5 of the Development Code.*

- 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.

(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

**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.

*The use of the property is not changing. Storage structures are permitted in the R-2 District and will help clean up the parcel.*

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

*This lot, along with many others along this stretch, are unable to meet the front or rear setback requirements due to being platted between two roads prior to the adoption of the development code.*

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

*Storage structures are a permitted use in the R-2 District and it is unlikely that it will have any effect on the character of the locality and will help keep the parcel clean.*

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

*Economics are not a factor in this variance request. The new storage structure will help to secure personal items from being stolen.*

*Development Conditions for file no. 20-493 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/property owner must apply for and obtain a Conditional Use Permit for the flood proofing of the structure prior to applying for a building permit and land use permit.
3. 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.
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 ensure that the permit holder is in compliance with the conditions of approval and all other applicable statues, rules and ordinances.
6. This variance is granted solely for the residential dwelling. Any other structure placed on the lot must meet the required setbacks.

Dan moved to accept the findings and conditions and grant File #20-493. Jane seconded and the motion carried. The applicant was given a copy of the findings and decision.

7. Dan moved to adjourn at 8:20 p.m. Jane seconded and the motion carried.

Respectfully submitted,

Karen E. Loehrer  
Administrative Secretary