

**MINUTES OF THE BLACK HAWK COUNTY BOARD OF ADJUSTMENT MEETING HELD
ON AUGUST 27, 2019 HAROLD E. GETTY COUNCIL CHAMBERS –
WATERLOO CITY HALL.**

Lucas Jenson called the regular monthly meeting of the Black Hawk County Board of Adjustment to order at 7:04 pm, Tuesday, August 27, 2019, in the Harold E. Getty Council Chambers - Waterloo City Hall.

I. Call to order and roll call

Members present: Lucas Jenson, Diane Depken, and Dr. Laval Peloquin

Members absent: Larry Oltrogge

Also present: Black Hawk County Planning Staff – Seth Hyberger and John Dornoff, and 3 members of the public

II. Approval of the Agenda

It was moved by Dr. Peloquin and seconded by Depken to approve the agenda. Motion carried unanimously.

III. Approval of Minutes of the June 25, 2019 meeting.

It was moved by Depken and seconded by Dr. Peloquin to approve the minutes of the June 25, 2019 meeting. Motion carried unanimously.

VI. New Business

1. 10227 Grundy Road – Mohr Side Yard Setback Variance

A request for a variance to the 25' side yard setback requirement to construct a 104' X 54' (5,616 SF) residential pole building in the "A" Agricultural District.

Hyberger gave the staff report.

Dr. Peloquin indicated the location of the proposed building on the aerial map. Hyberger noted that it will be a residential pole building and they are allowed in the county as a principle permitted use.

Bryce Mohr, 10227 Grundy Road, Hudson, Iowa, noted the location of the proposed residential pole building, corn crib, and garage on the lot. Dr. Peloquin asked the applicant how far will the proposed residential pole building be from the existing corn crib and garage. Mohr noted that his land is sloped and he will still maintain a 10' setback to the north property line from his and noted the proposed distance is 20' from the residential pole building to the corn crib and garage. Dr. Peloquin asked Mohr why the variance was needed and why he could not build his residential pole building further south from the property line. Mohr noted the variance will give him more clearance access to the shop portion of his residential pole building.

Depken asked the applicant if he is proposing to build a residential pole building or just a pole building. Hyberger noted it will be a residential pole building and the residential portion of the building will still need to meet building code residential requirements. Residential pole

buildings with residential quarters are allowed in the county as a principle permitted use. Dr. Peloquin noted that the variance will be needed to allow for a 10' setback from the road. Hyberger noted it is 10' setback from the north property line and not the road. Mohr noted that his home will be 800' from Grundy Road. Depken asked Mohr if his property is in agricultural production with corn or soy beans. Mohr indicated that his land will continue to be farmed. Dr. Peloquin noted that the proposed residential pole building could still meet the 25' setback requirement according to code. Hyberger noted it could still be built to code. Jenson then indicated that not awarding the variance will result in the applicant having to tear down his corn crib and garage. Mohr also noted not allowing for the setback would be a waste of land and result in additional farm land being taken out of production as well. Dr. Peloquin indicated that the corn crib would be 25 feet to the south of the proposed residential pole building site and questioned if the variance is still needed. Hyberger indicated the required side yard setback is 25'. Mohr noted he would have to tear down his garage and corn crib if the variance is not approved. Hyberger then stated that accessory structures only need to be 3' in between buildings. Dr. Peloquin asked the applicant if he plans to plat off additional lots for any new homes. Mohr said there will be no additional homes or lots on his property as long as he owns the land. Dr. Peloquin asked the applicant how many acres does he own. Mohr noted he has 12 acres and all of his farm ground will remain in agricultural production.

It was moved by Depken and seconded by Dr. Peloquin, to approve a request for a variance to the 25' side yard setback requirement to construct a 104' X 54' (5,616 SF) residential pole building in the "A" Agricultural District. Motion carried unanimously.

2. W of 6311 Waverly Road – Aikey Two-year Temporary Variance for Accessory Structure

A request for a two-year temporary variance to allow for a 72' X 80' (5,760 SF) detached accessory structure to be built before the principle permitted use or home in the "A-R" Agricultural-Residential District.

Hyberger gave the staff report.

Kelli Aikey, 5710 Timber Ridge Road, noted that they do have their current home sold, but she is giving the buyer until January of 2020 to sell their home. Aikey noted that they just need something to move their stuff into before their home is built and her husband needs space for his vehicles. Aikey stated they could rent a place while the home is being built, but would still need a place to store their vehicles till their home is built. Dr. Peloquin noted that the accessory structure is going to be built regardless and asked the applicant if they have plans for the house yet. Aikey noted that they already have plans for the home. Jenson asked Hyberger what the typical time frames were for other persons that were approved for temporary variances to build accessory structures before the principle permitted use. Hyberger stated variances have been approved for a year, two years, or 18 months. Dr. Peloquin asked Hyberger how long has the ordinance been in effect which prevents accessory structures from being built on a property without a principle permitted use. Hyberger indicated he did not know which year that ordinance went into effect, but it has at least been 10 to 15 years, and noted that the City of Waterloo has the same policy as well. Dr. Peloquin asked Hyberger if he has run into any situations in which the home was not built after the temporary variance expired. Hyberger noted he has not seen one case in which a home was not built or under construction when the temporary variance had expired. Jeff Aikey, noted they were originally asking for two years, but now that they have their home sold, they may begin construction of their home next year. Jenson noted the applicant could come before the Board of Adjustment to request a time

extension if it was needed, otherwise these temporary variances have never really been an issue for the Board of Adjustment.

It was moved by Dr. Peloquin and seconded by Depken to approve a request for a variance to the 25' side yard setback requirement to construct a 20' X 33' (660 SF) attached garage addition in the "A" Agricultural District. Motion carried unanimously.

V. Discussion Items

Dr. Peloquin noted that he did not like the term "Substantial Justice will be Done," and questioned if it could be changed on the staff reports. Dr. Peloquin noted justice is a subjective term and they are a board analyzing objective reasons to approve or deny a request. Depken noted justice for who. Hyberger indicated that makes sense, but noted that the Board of Adjustment and staff have followed these exact same criteria for years. Dr. Peloquin also noted that if they say no to a request, they are stating there is no justice. The Board of Adjustment needs to be just. Hyberger asked the Board of Adjustment members if they would like staff to remove, "Substantial Justice will be Done, from the criteria and simply keep the first part. Dr. Peloquin agreed. Jenson indicated that he has always viewed the staff report criteria as coming from the Zoning Ordinance itself. Jenson noted that our Zoning Ordinance may be flawed, but that is what the criteria spells out. Hyberger noted that he will discuss this issue with Aric Schroeder when he gets back in the office, regarding whether the criteria can be changed. Dr. Peloquin noted there will be times when they set a precedent on a particular issue, but if the Board of Adjustment does not approve a request, they would not be viewed as just. Depken also questioned that substantial justice is being done for whom. She also questioned if the term substantial justice can even be omitted in the reading from the existing criteria. Jenson noted that the Board of Supervisors would have the final say as to whether the criteria can be changed. Dr. Peloquin stated that the Board of Supervisors would want to be just as well. Hyberger indicated he would discuss the criteria with Aric Schroeder and discuss the criteria at the next meeting.

VI. Adjournment

It was moved by Depken and seconded by Dr. Peloquin to adjourn at 7:30 P.M. Motion carried unanimously.

Respectfully submitted,



Seth Hyberger,
Black Hawk County Zoning Administrator