

**MINUTES OF THE BLACK HAWK COUNTY BOARD OF ADJUSTMENT MEETING HELD  
ON SEPTEMBER 24, 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 7:00 pm, Tuesday, September 24, 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 2 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 August 27, 2019 meeting.**

*It was moved by Dr. Peloquin and seconded by Depken to approve the amended minutes of the August 27, 2019 meeting. Motion carried unanimously.*

**VI. New Business**

**1. 6911 Weiden Road– Norero Front Yard Setback Variance for Replacement Accessory Structure**

A request for a variance to the 50' front yard setback requirement to construct a replacement 60' X 30' (1,800 SF) accessory structure in the "A" Agricultural District.

Hyberger gave the staff report.

Luis and Terri Norero, 6911 Weiden Road, noted that his accessory structure was destroyed by wind in June of 2019 and indicated that they just recently moved from Florida to Iowa. Noreno stated that he has a signed letter from the neighbors and presented it to the members of the Board of Adjustment. Terri Noreno indicated that the main reason they are asking for a variance is to keep the structure out of the floodplain and noted that her home had previously flooded twice. Once in 2008 and again in 2016. After that a floodwall was placed at the back of the home. Dr. Peloquin asked the applicant the location of their septic leach field. Terri Norero indicated that the septic system and leach field are located directly south of their home, and indicated that their housing site received a LOMA in 2000 and it was recertified by FEMA in 2011. Hyberger noted that the current 100-year floodplain covers the entire area along Weiden Road, but noted the proposed 2021 FEMA floodplain map will have some of the property at 6911 Weiden Road taken out of the 100-year floodplain. The Norenos indicated that their home has not flooded since 2016.

Depken asked Terri Norero if their concrete pad was in good shape. Terri Norero indicated that it was. Dr. Peloquin asked if there is a reason why the orientation of the building can be change to have the narrow side face east and west, instead of north and south. The Norenos indicated they could change the configuration of the accessory structure, but they would have to construct a new concrete pad. Dr. Peloquin asked the applicant if the County maintained Weiden Road. Terri Norero noted that it is maintained up to the private airstrip, which is just north of their neighbor's property. Terri Noreno noted that there may be an issue with their leach field if they have to place their accessory structure 60 feet from the west property line. Dr. Peloquin indicated the main issue with this request is that the non-conforming use section requires the proposed accessory structure to come into compliance with the current Zoning Ordinance. Dr. Peloquin reiterated that the building could be reconfigured east and west, instead of north and south, still meet the requirements of the Zoning Ordinance, and would only require a new concrete pad to be constructed.

Depken asked the applicant, in regards to the hardship, how much would a new concrete pad cost. Luis Noreno indicated he is not quite sure how much it would cost. He has not received a cost estimate for that. Depken noted that the request does meet the 4 criteria necessary to qualify for a variance. Terri Noreno stated that the cost of a new concrete pad would be approximately \$7,000 to \$10,000. Dr. Peloquin asked how much the building would cost. Terri Noreno noted that the building would cost around \$50,000. Dr. Peloquin noted that the cost of the pad will still end up being less than 50% of the replacement cost. Depken noted that she still views the variance request as being a hardship. Dr. Peloquin noted that it depends on how someone views the variance request as a hardship and noted that \$10,000 does not meet the threshold of being 50% of the total project cost at the time of destruction. Depken indicated that the replacement cost is not part of the variance criteria and noted that a hardship does not always have to be financial. Dr. Peloquin does agree that a tornado or high winds damaging his accessory structure is a hardship. Jenson stated that should a non-conforming structure be destroyed by an extent to 50% or more of its replacement cost and noted the destruction of the accessory structure is 100% of the replacement cost. Depken stated that is a moot point, the Zoning Ordinance states that the applicant has to come to us and ask for an exemption. Dr. Peloquin stated that they can decide to ignore the Zoning Ordinance. Depken state it's not about ignoring the Zoning Ordinance; it's about recognizing a non-conformity. Dr. Peloquin stated they can still place the accessory structure with an east-west alignment and still meet the provisions of the Zoning Ordinance, miss the septic system and leach field, and meet the setback requirements. Depken noted that they have received similar requests in the past where it was a hardship due to the location and other factors. Dr. Peloquin noted that they should make changes to the Zoning Ordinance. It is the Board of Adjustment's job to follow the Zoning Ordinances and only make exemptions based on exceptionally means. If the cost of replacement is 50% or more. Depken noted that is why they come to the Board of Adjustment, to address nonconformities, and it is the Board of Adjustment's job to make sure the four criteria are meet. Dr. Peloquin asked the Noreno's if they can still build their new structure without a variance. Luis Noreno stated it depends on the demarcation of where the accessory structure is placed. Dr. Peloquin pointed to a LOMA map in the meeting packet that showed the previous location of the accessory structure in relation to what areas were removed from the 100-year floodplain. Terri Noreno stated that they could possibly build the accessory structure in a different location that meets the requirements of the Zoning Ordinance, but they may have to modify the location of their well and driveway. Dr. Peloquin asked what the building is being used for. The Norenos indicated that it would be used for the storage of classic vehicles and other items.

Jenson asked the applicant if there is more information concerning the hardship that can be given to the members of the Board of Adjustment to help solidify their variance request. Terri Noreno indicated that is something that they could do. Dr. Peloquin indicated that their needs to be more justification as to why the replacement accessory structure cannot be brought into compliance. Dr. Peloquin noted it is their obligation to follow the Zoning Ordinance and not allow for subjective analysis to take place. Depken indicated it is their responsibility to take actions relative to the four variance criteria as identified in the Zoning Ordinance. Depken requested the applicant to provide additional information to justify the hardship and the need for a variance. Hyberger asked the Board of Adjustment if they plan to table the request until they receive additional information. Dr. Peloquin asked if they could reapply. Hyberger noted persons cannot reapply for a variance, but they plan to make a change to the Zoning Ordinance to allow for one appeal to a variance ruling after 6 months. Hyberger noted the only remedy right now is District Court. Dr. Peloquin noted that as it stands. The current request does not meet the criteria for the issuance of a variance. Jenson noted that if there is additional information that they could have for the next meeting, they could table the request. The Norenos indicated that they could come back with additional information. Depken indicated they are coming before us due to a hardship. Dr. Peloquin noted there is a means for them to conform with the Zoning Ordinance, that involves changing the orientation of the building, and the cost of a new concrete pad should not by itself should not be considered a hardship. Depken read the for variance criteria as identified in the staff report, and noted the first three criteria are most important in regards to analyzing requests. Dr. Peloquin noted if there was nothing on the land, the applicant would have to comply with the Zoning Ordinance. There would be no non-conformity and no exemption would be required because it is possible to build it and meet all requirements of the Zoning Ordinance. Jenson noted they could table the request and the Noreno's could come back next month with additional information. Hyberger noted this information could include additional costs associated with having to move the well, septic system/leach field, driveway, or etc.

***It was moved by Depken and seconded by Dr. Peloquin, to table the request for a variance to the 50' front yard setback requirement to construct a replacement 60' X 30' (1,800 SF) accessory structure building in the "A" Agricultural District. Motion to table the request carried unanimously.***

**V. Discussion Items**

**VI. Adjournment**

***It was moved by Dr. Peloquin and seconded by Depken to adjourn at 7:35 P.M. Motion carried unanimously.***

Respectfully submitted,



Seth Hyberger,  
Black Hawk County Zoning Administrator