

LINN COUNTY BOARD OF ADJUSTMENT

Jean Oxley Public Service Center
935 2nd Street SW, Cedar Rapids, Iowa

MINUTES

Wednesday, February 23, 2022

I. QUORUM DETERMINED:

The Linn County Board of Adjustment meeting was called to order at 6:30 p.m. by Chairperson, Brandy Meisheid. The meeting was held in the Jean Oxley Public Service Center, 935 2nd Street SW, Cedar Rapids, Iowa.

PRESENT: Brandy Meisheid, Chair 12/31/23
Sara Alden, Vice Chair 12/31/25
Michael Martin 12/31/24
Ron Hoover 12/31/22

ABSENT:

STAFF: Charlie Nichols, Planning & Development Director
Mike Tertinger, Senior Planner
Elena Wolford, Assistant County Attorney
Ryan Sampica, Recording Secretary

See attendance sheet for community sign in.

II. OLD BUSINESS

II. NEW BUSINESS

JV22-0001 Variance - Side & Rear Yard Setbacks Steve Takes , Owner

The applicant is requesting a twenty-five (25) foot variance from the twenty-five (25) foot rear-yard setback requirement and a ten (10) foot variance from the ten (10) foot side-yard setback requirement in the HC (Highway Commercial) Zoning District. The applicant demolished an existing legal nonconforming 168 square foot detached accessory structure and constructed a 221 square foot structure, in approximately the same location, along the assumed rear and side lot lines.

Per Article VII, Section 107-139, §(e)(3)(b)(d) and Article V Section 107-94, §(c)(2)(d) of the Linn County Unified Development Code (UDC) the required setbacks in the HC Zoning District are ten (10) feet for the side yard and twenty-five (25) feet for the rear yard. At this time, there has been no independent verification of the exact location of the property lines by a licensed engineer, architect or surveyor.

Per Article I, Section 107-5, no structure shall be erected, converted, enlarged, reconstructed or altered; no land shall be used or subdivided; and no development permit shall be issued, designated, or approved unless such structure, use or permit complies with the provisions of this chapter.

A variance may only be granted by the Board of Adjustment upon a finding that, due to special conditions, a literal enforcement of the provisions of the ordinance will result in an unnecessary hardship and amount to a "practical confiscation" of the property. The applicant must demonstrate that the hardship was created by the ordinance and not by the applicant.

Staff recommends denial of the requested setback relief. There are no special topographic or other conditions related to the property that necessitate the encroachment of a new structure into the required rear and side yard setback. Upon demolition of the prior legal nonconforming shed, any replacement structure is required to meet all setback requirements for the HC Zoning District. In this case, the owner demolished the original shed and rebuilt a new structure at his own discretion. The constraints of the property dimensions or the fact that the owner has already replaced the structure does not constitute a practical confiscation. This request appears to merely serve as a convenience to the applicant to allow the new shed to remain in place. The property, including an existing 3,240 sq. ft. commercial warehouse, still has a reasonable economic use if used in compliance with the regulations, and therefore there is no "practical confiscation" of the property without approval of the Variance request. Any perceived hardship was not created by the provisions of the ordinance.

Steve Takes, 841 44th St SE, gave the background of the old building and why the new building was put where it was. He mentioned that he was unaware that in the Zoning District he is in that he needed to get permits for any structure being built.

Hoover asked if the original structure got damage in the Derecho from 2020. Takes answered that yes it did.

Hoover then asked if the new structure was built on the existing foundation. Takes said that yes it was, however the new building is slightly larger.

Martin asked if there was an allowance given for Derecho damaged structures. Nichols answered that yes, building permit fees were waived for one year, but the zoning ordinance still applies. Any new structure will need to be built to the current codes.

Alden asked if the prior building had concrete floors. Takes said that it had gravel floors.

Meisheid asked if the cost of moving the building play into the hardship consideration. Nichols said that a hardship is "depriving use of the property;" this instance does not satisfy that statement because of the other building on the property.

Alden asked if moving the structure is possible. Takes explained the locations of the well and septic and because of that he said there isn't a good place for it

Alden asked if the larger structure is part of the business use. Takes said yes it is.

Alden then asked can you store in the bigger, existing building what you plan on storing in the new smaller one. Takes said not really with the fact that the ground is gravel in the bigger building and the weight of what will be store in this smaller structure will be so much greater.

Martin asked if the Variance is denied can the Board extend the timeframe. Tertinger confirmed the Board has the capability to extend the deadline to move or remove the building.

Motion by Martin to accept the Findings of Fact, Conclusions of Law, and Decision & Order as reflected in the staff report for Variance case JV22-0001 , and to deny case JV22-0001 for the side and rear yard setbacks, amending the Planning & Development Department case condition that the disputed structure be removed, or relocated within applicable setbacks within 60 days to 120 days . Second by Alden.

Alden Aye
Martin Aye
Hoover Aye
Meisheid Aye

JC21-0015 Conditional Use Minor Modification - Utility Substation Expansion CIPCO, Owner

The applicant is proposing to expand an existing substation on the 4.87-acre subject property to accommodate area upgrades. A substation has existed at this location since at least 1950, per aerial photography. The property is zoned AG (Agricultural). Utility substations are an allowed use in the AG zoning district with an approved Conditional Use Permit. A Conditional Use Permit (C-16-13) was granted by the Linn County Board of Adjustment in 2013 to allow for proposed upgrades and expansion of the substation equipment. An accompanying final plat case (F-09-13) was approved and recorded in 2013, enlarging the subject parcel from 0.8 acres to 4.87 acres to accommodate the proposed expansion. **Per Article IV, Section 107-73, § (6)(b)**, minor modifications to approved conditional uses are permissible with the approval of the Board of Adjustment after review by the Technical Review Committee. A modification is minor if it has no substantial impact on neighboring properties, the general public, or those intended to use the development.

The utility substation use is allowed as a Conditional Use in the AG (Agricultural) zoning district per Table 107-147-1 in Article VII of the UDC. It appears that the proposal could be able to meet all of the standards **for approval for Conditional Use Permits in Article IV, Section 107-73, § (4) of the UDC. However, it** appears as though past work on the substation damaged subsurface drainage tile. The applicant must address the current drainage issues, as well as submit a plan to address any drainage issues that could occur as the result of the new construction.

Staff recommends approval subject to the conditions of the staff report.

Hoover stated that he believes that he should recuse himself from this case.

Elena Wolford, Linn County Attorney, stated that a Board Member may recuse themselves if they feel they have a conflict of interest, but should keep in mind that this is a stand-alone case and should be considered on its own merits.

Meisheid asked about the purpose for the expansion. Nichols said the application states “grid reliability and area generation.”

William Sondermann, Manager at CIPCO, presented regarding the application for substation expansion.

After the presentation from CIPCO, Wolford said the Board could recess so that she could speak with Hoover about his possible recusal.

After a short break, Hoover officially recused himself from this case.

Alden asked what the estimated timeframe for repairs would be. Sondermann said weather permitting and everything going right his best guess would be 2-3 weeks.

Meisheid asked if Sondermann could explain what “grid reliability” means. Sondermann then explained how expansion and repair is done with the grid itself.

Meisheid asked if this was to bring it up to standard. Sondermann said that to bring a grid up to standard is to expand in this same way

Meisheid asked for clarifying information because Clenera (Coggon Solar LLC) had said that expansion isn't necessary for the nearby solar project. Sondermann said that they meant there wouldn't need to be a new substation built. There is the ability to add a transmission line to the substation and that Clenera will build a new collector substation to the South of the property.

Alden asked about additional screening after expansion. Sondermann stated that because of the expansion some vegetation will be removed and some will stay.

Gregg Geerdes, attorney for the Robinson family, spoke regarding their opposition to the proposed substation expansion.

Laura Robinson, 2094 Linn Delaware Rd, spoke in opposition to the proposal.

Tom Robinson, 2094 Linn Delaware Rd, spoke in opposition to the proposal.

Paula Robinson, 1127 Linn Delaware Rd, spoke in opposition to the proposal.

Sondermann presented his closing arguments and reviewed his Board of Supervisor presentation to address concerns from the public comment portion.

Alden asked how the resolution of these issues will be communicated to interested parties.

Brian Fagan, Simmons Perrine Moyer Bergman, attorney for CIPCO, spoke regarding how communication between the parties will be handled.

Geerdes spoke regarding the communication between parties.

Laura Robinson spoke regarding CIPCOs plan to re-route with tile.

Fagan responded to the Board about future steps for addressing the drainage tile, what CIPCO is willing to do and what they have done by agreeing to the Robinson's chosen engineer after a proposal from CIPCO of a different engineer was denied. The report from Robinson's engineer was generated and forwarded to the Robinson's but no communication has happened since then.

Laura Robinson, proved a closing statement regarding the drainage tile, getting the tile map, and the proposed cation of new Clenera substation.

Nichols presented his closing statements and provided clarification on points made regarding the drainage tile and communication between parties.

Martin asked if there is an easement on the property. Nichols said there is no easement substation parcel itself.

Martin asked to clarify that the size of the drain tile would change from 8" to 4". Sondermann said yes and there will be an overflow to facilitate that, as well as a stormwater detention basin to help capture rain/runoff.

Meisheid asked why the request coming now instead of in the future, and whether it was related to the nearby proposed utility-scale solar project. Sondermann answered yes.

Alden asked if the Robinsons are working on reviewing the proposed plan. Geerdes answered in the affirmative, stating that they are currently reviewing it.

Alden then asked how much time they need to review the plan. Geerdes said that once they have the amended report they would need 30 days to review.

Fagan spoke regarding the section of Iowa Code relating to drainage districts and tile line easements.

Geerdes said that they are favorable with letting CIPCO and the Robinsons communicate and come to an agreeable solution.

Motion by Martin to table Conditional Use Minor Modification case JC21-0015 until the next Board of Adjustment meeting (March 30th) and to discuss a resolution to the drainage tile and drainage issues with the adjoining property owners . Second by Meisheid .

Hoover		Recused
Martin	Aye	
Meisheid	Aye	
Alden	Aye	

IV. OTHER BUSINESS

Nichols Mentioned that the mask mandate for all Linn County owned buildings expires on Sunday 2/27/2022 and he also went over how Variances & enforcements are handled within our office

V. APPROVAL OF MINUTES

The minutes of the January 26, 2022 Board of Adjustment meeting were approved as submitted.

VI. ADJOURNMENT

The meeting was adjourned at 9:27 p.m.

Respectfully submitted,

Brandy Meisheid, Chair

Ryan Sampica, Recording Secretary