

LINN COUNTY BOARD OF ADJUSTMENT

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

MINUTES
Wednesday, March 29, 2023

I. QUORUM DETERMINED:

The Linn County Board of Adjustment meeting was called to order at 6:32 p.m. by Chair, 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
Ron Hoover 12/31/27
Michael Martin 12/31/24
Brian Price 12/31/26

ABSENT:

STAFF: Stephanie Lientz, Planning & Zoning Division Manager
Mike Tertinger, Senior Planner
Brad Wylam, Planner II
Jessie Black, Recording Secretary

See attendance sheet for community sign in.

II. OLD BUSINESS

III. ELECTION OF OFFICERS

Meisheid motioned to nominate Alden as Chair in 2023. Hoover second. All others present voting aye.

Meisheid motioned to nominate Price as Vice-Chair in 2023. Martin second. All others present voting aye.

IV. NEW BUSINESS

JC23-0001	Mike Tertinger	Chipokas Development, Owner	Conditional Use
		Ben Dahl, Petitioner	Contractor's Yard

Mike Tertinger presented the staff report.

The applicant is requesting a Conditional Use Permit for the purpose of developing commercial contractor condos and flex business lease units in the HC (Highway Commercial) zoning district. The proposed units will be accessible to the lessees 24 hours per day and 7 days per week. There will be no employees of the property owner on site at any time. The applicant has proposed 34 units with each unit containing 1 bathroom. The applicant anticipates 60-120 vehicles coming to the site per day at full capacity. The proposal requires a minimum of 82 parking spaces and the applicant has shown 94, 34 of which are interior parking spaces. The type of business the applicant anticipates renting to include, but is not limited to, small startup businesses needing commercial space, construction contractors, cabinet makers, and audio installation contractors. Water and sewer service is to be provided through connection to City of Cedar Rapids services adjoining the property.

A Final Plat (case JF23-0004) is running concurrently with the proposal for the purpose of expanding the existing Lot 1, Vernon Valley Second Addition into Parcel A, Plat of Survey 2710 east of the existing Caseys gas station.

A Minor Boundary Change application (case JMBC-0004) is running concurrently with the proposed replat. The boundary change will allow the expansion of the commercial lot and must be completed prior to the recording of replat as a condition of approval.

It appears that the proposal meets all of the standards for approval for Conditional Use Permits in Article IV, Section 107-73, § (4) of the Linn County Unified Development Code. However, the parking space requirements require further staff review. Linn County Conservation will also be reviewing the necessity of the proposed trail easement along the east side of the property.

The proposal falls within the Bertram Commercial Area of the City of Bertram/Linn County Strategic Growth Agreement and will require Bertram review of the proposed subdivision prior to Board of Adjustment approval.

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

Shawn Leonard, 7300 Mt Vernon Rd, spoke on behalf of her mother, who owns property across Mt Vernon Rd from the proposal. Leonard asked for clarification on the parcels involved in the proposal, then expressed concerns about the impact this will have on traffic.

Ben Dahl, applicant, explained that he was currently in the process of completing a Minor Boundary Change, to combine two parcels into one.

There were no other questions from the Board or members of the public.

The Board deliberated the case. Meisheid was unconcerned about the impact this proposal would have on traffic due to the volume of traffic that currently exists in this area.

Motion by Martin to accept the Findings of Fact, Conclusions of Law, and Decision & Order as reflected in the staff report for the Conditional Use case JC23-0001, and to approve case JC23-0001, Second by Hoover.

Hoover	Aye
Meisheid	Aye
Martin	Aye
Price	Aye
Alden	Aye

JC23-0003	Stephanie Lientz	Anna Wilson, Owner	Conditional Use
		Glyn Mawr Vineyard & Winer, Petitioner	Home Occupation

Stephanie Lientz presented the staff report.

The applicant is requesting a Conditional Home Occupation Permit for manufacturing test batches of wine and for wine storage on the subject property, which will contain 3.0 acres when Land Preservation Parcel Split case JLPS22-0003 is

completed. The property is zoned AG (Agricultural). The applicant proposes to use approximately 1,200 square feet total for the business use within an existing 3,364 square foot detached accessory structure. The business use inside the structure will be distinct and separate, while the remaining area will be used for personal shop and storage space. The applicant's proposal indicated that no non-resident employee will be on site, and it is estimated that there will be up to 1 weekly delivery. No customers will be visiting the subject property. It appears that the proposal meets all of the standards for approval for Conditional Use Permits in Article IV, Section 107-73, § (4) of the Linn County Unified Development Code. However, the parking space requirements require further staff review. Linn County Conservation will also be reviewing the necessity of the proposed trail easement along the east side of the property.

A home occupation is allowed in the AG (Agricultural) zoning district with an approved Conditional Use Permit per Article VII, Section 107-147. A Conditional Home Occupation allows the applicant to use up to 1,200 square feet for the home occupation business on a parcel of this size. A home occupation with one or more nonresident employees or that will use part of an accessory structure for the business requires a Conditional Use Permit for a Home Occupation in the AG (Agricultural) zoning district. The proposal conforms to the standards for approval in Article IV, Section 107-73, § (4) and Article VI, Section 107-113, § (h) of the Linn County Unified Development Code.

Land Preservation Parcel Split Case JLPS22-0003 must be recorded prior to commencement of business operation on the subject property.

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

There were no questions from the Board or members of the public.

Motion by Martin to accept the Findings of Fact, Conclusions of Law, and Decision & Order as reflected in the staff report for the Conditional Use Home Occupation case JC23-0003, and to approve case JC23-0003, Second by Hoover.

Alden	Aye
Price	Aye
Mesheid	Aye
Hoover	Aye
Martin	Aye

JC23-0004	Stephanie Lientz	Abe & Kim Simon, Owners	Conditional Use
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Stephanie Lientz presented the staff report.

The applicants are operating one seasonal softball field on the subject property, which is zoned AG (Agricultural), containing approximately 12.29 acres. There is a batting cage, outfield fence, and backstop, as well as a scoreboard, dugout, and bleachers. Proposed hours of operation are Mon-Fri 3PM - 9PM, Sat-Sun 7AM – 10PM. There will be no non-resident employees coming to the site.

The outdoor recreation and entertainment softball field use is allowed as a Conditional Use in the AG (Agricultural) zoning district per Table 107-147-1 in Article VII of UDC. It appears that the proposal meets all of the standards for

approval for Conditional Use Permits in Article IV, Section 107-73, § (4) of the UDC. The proposal must meet the standards for the outdoor recreation and entertainment softball field use found in Article VI, Sec. 107-115, § (kk) of the UDC, and parking standards found in Article V, Section 107-93, § (e) of the UDC. The use appears to be compatible with surrounding property uses and adequate measures can be taken to minimize any potential adverse impacts on adjoining property. The field lighting must meet all requirements of the Building Division, and requirements in Article VI, Sec. 107-115, § (kk)(6).

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

Abe Simon, owner, offered to answer questions from the Board. He explained how the proposal grew from a neighborhood practice field into a commercial business during Covid shutdown.

Lientz added that she had not received any complaints from neighbors about this proposal.

Motion by Martin to accept the Findings of Fact, Conclusions of Law, and Decision & Order as reflected in the staff report for the Conditional Use case JC23-0004, and to approve case JC23-0004, Second by Price.

Martin	Aye
Hoover	Aye
Mesheid	Aye
Alden	Aye
Price	Aye

JC23-0005	Stephanie Lientz	Linn County Conservation, Owner	Conditional Use
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Stephanie Lientz presented the staff report.

The applicant is requesting an expansion of Buffalo Creek Park, which is zoned CNR (Critical Natural Resource) and AG (Agricultural). The applicant is proposing to remove several existing structures, including a shelter and restroom, and replace the existing dump station. The proposal also includes 19 new camp sites, a group fire pit area, new shower facility, and new playground area.

The public park and open space use is allowed as a Conditional Use in the CNR (Critical Natural Resource) and AG (Agricultural) zoning districts per the Use Table 107-147-1 in Article VII of the Linn County Unified Development Code (UDC). It appears that the proposal meets all of the standards for approval for Conditional Use Permits in Article IV, Section 107-73, § (4) of the UDC and for the public parks and open space use in Article VI, Section 107-114, § (i) of the UDC. A minor site plan is required for a minor modification of a Conditional Use Permit per Article IV, Section 107-73, § (4) (6) of the UDC.

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

There were no questions from the Board or members of the public.

Motion by Martin to accept the Findings of Fact, Conclusions of Law, and Decision & Order as reflected in the staff report for the Conditional Use case JC23-0005, and to approve case JC23-0005, Second by Meisheid.

Meisheid	Aye
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Hoover Aye
Price Aye
Martin Aye
Alden Aye

JV23-0001 **Mike Tertinger** **Justin & Andrea Wasson, Owners** **Variance**
Chris Madsen, Petitioner

Mike Tertinger presented the staff report.

The applicant is proposing to change the use of the property from residential to commercial, to allow for the operation of a home construction and remodeling business. The proposed business will utilize the existing accessory structures as they are currently situated on the property. The applicant plans to convert the existing dwelling into an accessory structure for business use. Per the Linn County Unified Development Code (UDC), a 50-foot buffer is required when a commercial use abuts non-commercial uses or zoning districts. The adjacent property to the east can be characterized as a residential use. At this time, the applicant is requesting a Variance from the 50’ buffer requirement and is requesting 44’ of relief for the existing detached garage along the east property line.

This Variance is running concurrently with two Special Exception requests (case JSE23-0001). If the Variance and Special Exception requests are approved, the applicant will petition to rezone the property from Agricultural (AG) to Highway Commercial (HC). A contractor’s yard and outdoor storage use is allowed with a Conditional Use Permit in the HC zoning district. Along with the petition to rezone the property, the applicant will submit a concurrent application for a Conditional Use Permit to operate the contractor’s yard on the 12.36-acre subject property.

Per Article V, Section 107-93, §(d) of the Linn County UDC, the required buffer distance between commercial and residential uses is fifty (50) feet. 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.

Staff recommends denial. This request appears to merely serve as a convenience to the applicant to avoid construction of a new commercial building or relocation of existing buildings to outside the 50’ buffer requirement. Without the variance the property still has a reasonable economic use as a residential property, or hypothetically, as a commercial property with an approved rezoning, and if used in compliance with the buffer regulation, and therefore there is no unnecessary hardship and no “practical confiscation” of the property.

Justin Wasson, owner, and Chris Madsen, applicant, stated that future plans for the site include constructing a building to house all the business offices and shop area. Once constructed, they intend to demolish the existing structure that encroaches into the setback. Madsen insisted this is a temporary request. They also mentioned plans of maintaining and expanding the current vegetative buffer. Madsen’s intent is to move his business from the city of Marion into the county.

Hoover asked how the accessory structure to the east would be used. Madsen said tool storage.

Meisheid asked if there was a timeline for new construction. Madsen said there are several drainage and land management issues they would like to correct prior to building; he thought an appropriate timeline would be five to ten years, depending on the economy.

Roxanne Rustand, 1885 E Berry Rd, spoke in opposition of the proposal. She expressed her dissatisfaction with the amount of time she was given to prepare for the meeting, as she only received a notification letter a couple of days prior. Rustand shared concerns about the commercialization of her neighborhood and the potential impact on surrounding property values.

Lyle Hanson, 1881 E Berry Rd, spoke in opposition to the case. Hanson's concerns were related to the commercialization of surrounding properties, the wellbeing of his livestock, and access to the subject property.

Ricky Machula, 3225 Willow Ridge Rd, Marion, spoke in opposition to the proposal, on behalf of her sister Sherry Nebel. Kim Nebel, daughter of Sherry Nebel, also spoke in opposition with Machula. Machula expressed concerns about Madsen's timeline, drainage issues, and access to the subject property. Nebel added that their horses have gotten sick as a result from fires Wasson has had on his property. Machula was concerned that allowing this variance would set a precedent for future proposals.

Justin Wasson, owner, acknowledged Machula and Nebel's concerns about the health of their horses being affected by his fire. He stated he is much more cognizant of it now and will try to prevent similar issues in the future. Wasson affirmed he and Madsen would continue to be good neighbors.

Price asked if Wasson had intentions of selling the property to Madsen. Wasson said yes.

Madsen added that he anticipated only seven office employees, all other employees would meet at job sites. He promised to maintain the vegetative buffer, dispose of materials at the solid waste agency, and fix the drainage issues.

Alden asked Madsen to address access concerns. Madsen said he would work with Engineering to ensure the proposal meets current access requirements.

Price asked why Madsen chose this property for his business. Madsen said this parcel is located close to his current residence.

Price asked if Madsen had considered feasible alternatives. Madsen said he was open to suggestions. Tertinger added that the north end of the property, if rezoned to commercial, has adequate space, and could be used rather than the existing building within the 50' setback. He understood this option may not be financially feasible, but is a viable option by zoning standards.

Hoover asked what, if anything, is allowed within the 50' buffer. Tertinger said fencing, driveway, parking areas, vegetative screening, but no structures.

Martin asked staff to address concerns regarding surrounding property owner notices. Lientz stated that Linn County code does not require these notices to go out with a minimum number of days' notice, but staff tries to send them out one week prior to each meeting.

The Board deliberated the case. All members expressed concerns about Madsen's timeline and lack of specific information provided. **Based on the Board's discussion, the applicant chose to withdraw both of his cases from tonight's agenda.**

The Board suggested the applicant gather additional information prior to re-submitting their application.

JSE23-0001

Mike Tertinger

**Justin & Andrea Wasson, Owners
Chris Madsen, Petitioner**

Special Exception

Mike Tertinger presented the staff report.

The applicant is proposing to change the use of the property from residential to commercial, to allow for the operation of a home construction and remodeling business. The proposed business will utilize the existing accessory structures as they are currently situated on the property. The applicant plans to convert the existing dwelling into an accessory structure for business use. Per the Linn County Unified Development Code (UDC), a 50-foot buffer is required when a commercial use abuts non-commercial uses or zoning districts. The adjacent property to the east can be characterized as a residential use. At this time, the applicant is requesting a Variance from the 50' buffer requirement and is requesting 44' of relief for the existing detached garage along the east property line.

This Variance is running concurrently with two Special Exception requests (case JSE23-0001). If the Variance and Special Exception requests are approved, the applicant will petition to rezone the property from Agricultural (AG) to Highway Commercial (HC). A contractor's yard and outdoor storage use is allowed with a Conditional Use Permit in the HC zoning district. Along with the petition to rezone the property, the applicant will submit a concurrent application for a Conditional Use Permit to operate the contractor's yard on the 12.36-acre subject property.

Per Article V, Section 107-93, §(d) of the Linn County UDC, the required buffer distance between commercial and residential uses is fifty (50) feet. 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.

Staff recommends denial. This request appears to merely serve as a convenience to the applicant to avoid construction of a new commercial building or relocation of existing buildings to outside the 50' buffer requirement. Without the variance the property still has a reasonable economic use as a residential property or as a commercial property if used in compliance with the buffer regulation, and therefore there is no unnecessary hardship and no "practical confiscation" of the property.

The applicant withdrew this case from the agenda.

V. OTHER BUSINESS

VI. STAFF COMMENTS

Lientz stated that surrounding property owner notices would go out much earlier if the withdrawn cases are brought back before the Board in the future.

VII. APPROVAL OF MINUTES

The minutes of November 30, 2022, Board of Adjustment meeting were approved as submitted.

VIII. ADJOURNMENT

The meeting was adjourned at 8:14 p.m.

Respectfully submitted,

Sara Alden, Chair

Jessie Black, Recording Secretary

