

LINN COUNTY BOARD OF ADJUSTMENT

MINUTES

Wednesday, April 28, 2021

I. QUORUM DETERMINED:

The Linn County Board of Adjustment meeting was called to order at 6:30 p.m. by Chair, Ron Hoover. The meeting was held electronically, via GoToMeeting

PRESENT: Ron Hoover, Chair 12/31/22
Brandy Meisheid 12/31/23
Michael Martin 12/31/24
Margaret Burns 12/31/21

ABSENT:

STAFF: Charlie Nichols, Director
Elena Wolford, Assistant County Attorney
Stephanie Lientz, Senior Planner
Jessica Black, Recording Secretary

Special Statement: in accordance with Iowa Code Chapter 21.8, and to comply with current local Public Health guidelines limiting public gatherings, this meeting will be held electronically. Information on how to access this meeting has been provided on the meeting agenda, posted on our website.

II. OLD BUSINESS

III. NEW BUSINESS

JC21-0002 Stephanie Lientz FURLOU Bail Holdings , Owners Conditional Use - Contractor's Yard & Outdoor Storage

Stephanie Lientz presented the staff report.

The applicant is proposing to construct two (2) buildings connected by a loading dock, totaling 22,570 square feet for contractor's storage. The applicant is also proposing to permanently install four (4) storage containers on the south side of the parking area to store equipment related to the business. Each container is 40' x 8' or 320 square feet total. The subject property is legally described as Lot 2 of Vernon Valley 8th Addition, and contains approximately 1.93 acres. The applicant is proposing to hard surface 1.25 acres (65%) of the 1.93 acre subject property, including the buildings and paved parking area. The subject property is zoned HC (Highway Commercial), and has a land use designation of MUSA (Metro Urban Service Area).

The proposed use of contractor's yard or outdoor storage is allowed with a Conditional Use Permit in the HC (Highway Commercial) zoning district. 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 (UDC). Other development standards found in Article IV, Section 107-115, § (z) **must be met**, including requirements for a major site plan, and a requirement to hard-surface parking areas and drives for commercial uses in the MUSA (Metro Urban Service Area). Staff has approved a request for an administrative reduction in the number of parking spaces required in Article 5, Section 3, § (5) of the UDC, as well as a 10% reduction of the buffering requirements in Article V, Section 107-93, § (d). The business will connect to city services for water and wastewater. Vehicles, trailers, and materials associated with the business will be stored outside the buildings.

Vegetative screening will be installed as shown on the site plan along the western property boundary; a privacy fence is proposed along the southern property boundary.

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

There were no questions for the applicant from the Board or Staff. The applicant, Rich Gardner with Gardner Mechanical, offered to answer questions.

Lientz said she has not received any comment from the public in writing or verbally regarding this case.

Motion by Meisheid to accept the Findings of Fact, Conclusions of Law, and Decision & Order as reflected in the staff report for Conditional Use case JC21-0002 and to approve case JC21-0002. Second by Martin.

Burns	Aye	
Martin	Aye	
Meisheid	Aye	
Hoover		Aye

**JC21-0003 Stephanie Lientz Mary Costello Trust, Owner Conditional Use - Alliant Substation
Interstate Power & Light, Petitioner**

Stephanie Lientz presented the staff report.

The applicant is proposing to construct an electrical distribution substation on 7.0 acres of land on the subject property. An accompanying Final Plat case (JF21-0006) is running concurrently with this application.

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 (UDC). The use appears to be compatible with surrounding property uses and it appears that adequate measures can be taken to minimize any potential adverse impacts on adjoining properties, which are standards that are of particular concern when siting utility substations.

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

Meisheid asked Lientz if she had received any public comment regarding this case. Lientz stated she had not.

Burns wondered if the applicant would be required to provide a vegetative buffer or fence around the substation. Lientz said it is not required by zoning code, but added that the applicant is proposing an 8 ft. chain-link fence with 1 ft. of barbed wire.

Isaac Hodgins, with Shive-Hattery, spoke on behalf of the applicant, Alliant Energy, explaining that fenced enclosures are required by federal regulations. He added that the enclosure would also include a locked gate.

Motion by Meisheid to accept the Findings of Fact, Conclusions of Law, and Decision & Order as reflected in the staff report for Conditional Use case JC21-0003 and to approve case JC21-0003. Second by Martin.

Martin	Aye	
Burns	Aye	
Meisheid	Aye	

Hoover

Aye

JSE21-0003 Charlie Nichols James Sova & Judy Hagan, Owners Special Exception from Front Yard Setback

Charlie Nichols presented the staff report.

The applicant is requesting a special exception from the 50' front yard setback, or the northern property line along Cottage Grove Parkway. The property is in the AG (Agricultural) zoning district. The applicant is proposing to reconstruct an approximately 2,400 square foot structure built in 1972, which was damaged more than 50% of its market value during the August 10, 2020 derecho storm.

The accessory structure must meet the required front yard setback, which is 50 feet in the AG (Agricultural) zoning district. The structure is currently located approximately 38' from the front property line. This building was damaged more than 50% of its market value, and therefore must be reconstructed in conformance with current zoning code. A demonstration of a practical difficulty appears not to have been shown in this case, in that there are no circumstances unique to the property that would cause a practical difficulty in adhering to the 50' front yard setback. Unique circumstances may include: topographical conditions, surrounding, size and shape of the property, location of utilities, and other extraordinary situations. Because this structure was destroyed more than 65% of its fair market value by "an act of god", the Board may also grant a special exception if it finds some compelling necessity requiring a continuance of the nonconforming use.

Staff recommends denial of this application, as it appears that a practical difficulty has not been demonstrated.

Meisheid asked for clarification on the term "hardship". Nichols explained that a hardship, by law, is defined as depriving someone of the use of their property.

Burns questioned if traffic noise or car accidents, as mentioned by the applicant, could be considered a "hardship".

Jim Sova and Judy Hagan, applicants, explained that this building is currently located on the flattest part of the property and they do not have any other options for relocating other than moving the building to their pasture, which would greatly impact their horses. They stated that there is a dog yard and septic tank to the east of the house, and insisted that moving the building there would not be a suitable option either. Hagan stated that relocating the building would create a hefty financial burden for them.

Martin sympathized with the property owners and the inconvenience that would be placed upon them to move the building. He wondered if repairing the existing structure would be a better option, but it was determined to be more costly by the applicants.

Hoover asked which portion of the building, if any, the applicants intended to keep. Sova and Hagan said the concrete foundation.

Meisheid wondered if there was electrical for this building and where it was located. Sova stated there was electrical and showed the Board where the pole is located on the staff exhibits. The pole is 5-7 feet away from the building.

Burns asked for the dimensions of the current structure. The applicants stated 56' x 40', and added that the new structure would be the same size, but two feet taller.

Sova mentioned that rush hour traffic creates an excessive amount of noise. Hagan added that the building also creates a wind barrier.

Martin asked how close they are to 50% damaged. Charlie said 100% because they're proposing a new building.

Hoover listed a few of the hardships or impracticalities imposed by moving building: septic field, water lines, snow storage during the winter, existing foundation, established access to current location, electrical service. Although it does not meet setbacks, it meets the intent of the requirements regarding maintaining site visibility & site distance from the road.

Meisheid provided a list of possible hardships: taking away pasture from horses, current wind barrier, financial hardship, driveway reconstruction, sound & privacy, well & septic. She wondered if this is considered her personal opinion or actual hardship. Hoover said individually they may not be considered hardships, but cumulatively he thought they could be.

Hoover said he the owners would have reduced use of property if they have to move the location of the building in question into horse pasture or wherever building would have to be relocated to - some use of property would be diminished.

Burns wondered if the building would be in the way of any future projects at this intersection. Nichols said typically, the county plans for enough ROW for things like that. Typically, work can be done in the already-established right of way.

Hoover discussed the issues that need to be addressed through a motion to approve the special exception. Planning and Development staff has included three conditions in the staff report, and Hoover is questioning condition #2 to replat entire lot. He wondered if the applicants would amend the plat rather than re-plat entire lot. Nichols explained that in order to reconstruct the building, the lot will need to be replatted to remove the platted setback. Lientz stated there are platted setbacks on the lot that cannot currently be expunged any other way than a replat per the existing code language. Hoover expressed concern because when a lot is replatted, it is once again subject to conditions from county departments. Nichols explained that this setback is on the plat was put in place by subdivision code, rather than zoning code, and the Board of Adjustment has no power to grant a variance to a platted setback. Hoover said subdivision code does not require damaged building to be reconstructed. Hoover reiterated his belief that this is a large expense that he wants to remove the condition to replat. Nichols advised Hoover the Board could remove the condition through the motion and Nichols will work through the appropriate next steps with the property owner.

Motion by Meisheid to accept the Findings of Fact, Conclusions of Law, and Decision & Order as developed by the Board for Special Exception case JSE21-0003 and to approve case JSE21-0003. Second by Martin.

Meisheid motioned to amend motion and remove condition #2. Martin second.

Hardships summarized by the Board are: appropriate for snow storage, keeps remaining pasture as is, serves as wind block, financial hardship for new driveway & relocation, serves as sound & privacy barrier, and current location of well & septic field.

**Meisheid Aye
Hoover Aye**

Burns **Aye**
Martin **Aye**

**JV21-0002 Charlie Nichols James Sova & Judy Hagan, Owners Variance from Corner
Side Yard Setback**

Charlie Nichols presented the staff report.

The applicant is requesting a variance to the corner side yard setback, or the western property line along Highway 13, for accessory structures in the AG (Agricultural) zoning district. The approximately 2,400 square foot structure, which was constructed in 1972, was damaged more than 50% of its market value during the August 10, 2020 derecho storm.

The accessory structure must meet the required corner side yard setback, which is 50 feet in the AG (Agricultural) zoning district. The structure is currently located approximately 14 feet from the west corner side property line. This building was damaged more than 50% of its market value, and therefore must be built in conformance with current zoning code. 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 the applicant.

Staff recommends denial. There are no special topographic or other conditions related to the property that necessitate the reconstruction of the building within the setback. The property has a reasonable economic use if used in compliance with the regulations, and therefore there is no “practical confiscation” of the property without the Variance.

This case was presented concurrently with JSE21-0003; see the discussion regarding the motion for that case above.

Motion by Meisheid to accept the Findings of Fact, Conclusions of Law, and Decision & Order as developed by the board for Variance case JV21-0002 and to approve case JV21-0002. Second by Martin.

Meisheid moved to motion with amendment to remove condition #2. Martin second.

Hoover **Aye**
Burns **Aye**
Martin **Aye**
Meisheid **Aye**

IV. OTHER BUSINESS

V. BOARD COMMENTS

Hoover stated that the agenda lists Michael Martin as vice-chair & it should be Brady Meisheid.

Ron wondered if there were any applicants for BOA. Charlie said Brandy Meisheid’s husband applied, but he’s still checking into rules about that.

Martin wondered when the Board would meet in-person again. Nichols said the Board of Supervisors was waiting for 6 consecutive weeks of decreasing cases until opening the building again.

VI. STAFF COMMENTS

Nichols stated that the Board can expect more special exceptions & variance requests due to derecho damage.

VII. PUBLIC COMMENTS

X. APPROVAL OF MINUTES

The minutes of February 24, 2021 Board of Adjustment meeting were approved as submitted.

XI. ADJOURNMENT

The meeting was adjourned at 8:04 p.m.

Respectfully submitted,

Ron Hoover, Chair

Jessie Black, Recording Secretary