

LINN COUNTY BOARD OF ADJUSTMENT

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

MINUTES

Wednesday, May 25, 2022

I. QUORUM DETERMINED:

The Linn County Board of Adjustment meeting was called to order at 6:30 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	12/31/22
Michael Martin	12/31/24
Brian Price	12/31/26

ABSENT:

STAFF:

- Elena Wolford, Assistant County Attorney
- Charlie Nichols, Planning & Development Director
- Stephanie Lientz, Planning & Zoning Division Manager
- Mike Tertinger, Senior Planner
- Jessie Black, Recording Secretary

See attendance sheet for community sign in.

II. OLD BUSINESS

Hoover and Price recused themselves at this time.

Nichols informed the Board members that Central Iowa Power Cooperative (CIPCO) has requested a rehearing of case JC21-0015, Conditional Use Minor Modification - Utility Substation expansion. The applicant is stating that one of the conditions applied to their case is impossible to meet.

Brian Fagan, an attorney representing CIPCO, stated that the neighboring property owners (Robinsons) have denied CIPCO access to their property, therefore, making it impossible for CIPCO to complete repairs to drainage tile. Those repairs were a condition for approval in the previous Decision & Order and staff report when the case was previously heard and approved by this Board. Fagan asked that the Board members consider a rehearing of the case in order to review and reconsider previously applied conditions.

Alden asked why access was not granted by the Robinsons. Fagan stated that the Robinsons had other concerns, unrelated to this case, which led them to forbid CIPCO from having access to their property.

Martin asked if the Robinsons were aware that CIPCO was requesting a rehearing. Nichols said no, adding that surrounding property owner notices would be sent out prior to any hearing.

Nichols explained that some of the conditions applied to the CIPCO case involved making repairs to drainage tile on the Robinson's property by August 2022. Without access to the property, CIPCO would not be able to make the necessary repairs and the Conditional Use Minor Modification case would be null.

Alden asked if the rehearing would pertain to the entire Conditional Use case, or just the specific conditions that are unable to be met by CIPCO due to not being granted access to the property. Nichols stated only the conditions in question, not the entire case could be considered, at the discretion of the Board.

Meisheid asked what recourse the Board or CIPCO would have, should the Robinsons continue to deny access to their property. Fagan stated that CIPCO would not be able to complete their conditions, but he would continue communicating with the Robinson's attorney, Greg Geerdes, in the interim to resolve the outstanding issues.

Alden asked if the Planning & Development Department could reach out to the Robinsons to gain some insight into why access has not been granted, prior to scheduling a rehearing meeting. Nichols said a letter would be sent to the Robinsons as a surrounding property owner in the event that a rehearing is granted, but that the no other communication between the Planning & Development Department and the Robinsons is appropriate at this time.

Elena Wolford, Assistant County Attorney, suggested the Board take into account the August deadline when making their decision on whether or not they grant CIPCO a rehearing. She also asked that the Board consider Fagan's attempt to complete the conditions amicably, but to no avail.

Motion by Alden to allow a rehearing of Conditional Use Minor Modification Utility Substation case, JC22-0001, to be held at the next regular meeting on June 29, 2022. Second by Martin.

Alden	Aye	
Meisheid	Aye	
Martin	Aye	
Hoover		Abstained
Price	Abstained	

III. NEW BUSINESS

JC22-0001	Mike Tertinger	Conditional Use - Utility Substation	Linn County REC,
Petitioner			Margaret Probasco, Owner

Mike Tertinger presented the staff report.

The applicant is proposing to construct an electrical distribution substation on 4.56 acres of land on the subject property. An accompanying Final Plat case (JF22-0007) 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. Prior to construction, the applicant is also required to obtain a Federal Aviation Administration (FAA) permit for permission to build in the approach path to the Eastern Iowa Airport.

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

Kevin Stucker, petitioner, Linn County REC, offered to answer questions from the Board or members of the public.

Hoover asked if there would be lighting installed at the proposed substation. Stucker said yes, downcast LED lighting.

Meisheid referred to several other substations that have been proposed in recent past, and asked why another substation is needed. Stucker explained that the other substations are considered transmission substations, with higher voltage. Substations are tiered; the proposed substation is at the bottom, whereas transmission substations are one tier above.

Price asked if the proposed substation would handle additional development in this area. Stucker said the substation is sized appropriately to handle the new FedEx distribution facility, and some additional growth, depending on future developments.

Margaret Probasco, owner, asked who would be responsible for related road repairs. She insisted the applicant be responsible, not her.

Tertinger explained that Linn County REC is purchasing the lot, which would make them responsible for road repairs. He added that any conditions regarding road repairs would be found in the Road Agreement, from Linn County Engineering.

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 Utility Substation case JC22-000 1, and to approve case JC22-000 1, second by Price.

Martin	Aye	
Price	Aye	
Meisheid	Aye	
Hoover		Aye
Alden	Aye	

JAP22-0004 Appeal of Agricultural Exemption Determination Philip Kelly, Owner

Alden recused herself due to conflict of interest. Her husband is the contractor for proposed construction.

Charlie Nichols presented the staff report.

The applicant is appealing the decision to deny an agricultural exemption for construction of a new single-family dwelling on the subject parcel.

The subject parcel contains approximately 21.57 acres. The exemption determination form lists 16 acres of hay to be produced in the future (all for commercial production).

The accompanying staff report will show that:

1. The parcel is not a "farm unit" and therefore, by definition the proposed house cannot be considered a "farm house."
2. Additionally, Iowa Code requires a farm house to be "primarily adapted" for agricultural purposes. On the basis of all available information regarding the use of the property and the limited scope of agricultural production, the proposed house cannot be considered to be primarily adapted for agricultural purposes.

For these reasons the proposed house cannot be considered a farm house.

Staff recommends the Board of Adjustment uphold the determination of the Zoning Administrator to deny the Agricultural Exemption.

Price asked if Kelly would be allowed to request another exemption, should the current proposal be denied. Nichols said yes, only if new information is presented. Price asked if the exemption could be revoked. Nichols said it was possible, but only likely in the event that adjacent property owners complain or it is brought to the County's attention somehow. Nichols said the county does not follow up on granted exemptions.

Philip Kelly, petitioner, insisted that he would like to have animals and start a farm on this property, but does not have the means to do so without living on or near the property, thus the reason for his exemption request. He stated that he intends to purchase several Jacob's Sheep from his brother in-law to start his farming business, but argued that he is unable to properly care for them if he is not living on the property.

Kelly explained that he submitted permit applications for the proposed dwelling while waiting for a determination to be made on his exemption request. He insisted the permitting process was difficult and the county had poor communication. Kelly found the requirements from Natural Resource Conservation Service to be unreasonable. He finished his presentation by asking that the Board considers his request and overturns staff determination to deny his appeal.

Price asked how the exemption would benefit Kelly. Kelly stated that the exemption would allow him to disregard the storm water management requirements and proceed as originally planned. He views agricultural exemptions as a way to allow for farmers to operate without getting caught up in "red tape".

Nichols stated that the storm water management requirements were put into place due to previous storm water issues near the property, adding that such conditions are usually not applied to the construction of a new single family dwelling, but would be in this case to prevent future issues. Lientz added that during the original subdivision process, several surrounding property owners stated their concerns about drainage and storm water management, leading to more stringent requirements for Kelly, as the owner of this property. Lientz explained that the storm water management requirements were listed in the bound documents, which would have transferred to the new owner when the property was purchased.

Price asked if Kelly would be exempt from storm water management requirements, should his request be approved. Nichols said he would need to seek additional legal counsel in order to answer that question.

The Board deliberated, most members supporting staff's decision to deny the appeal.

Motion by Martin to accept the Findings of Fact, Conclusions of Law, and Decision & Order as reflected in the staff report for the appeal case JAP22-0004 , and affirm staff decision to deny the appeal , second by Meisheid .

Price	Aye
Meisheid	Nay
Alden	Abstained
Martin	Aye
Hoover	Aye

JV22-0002

Variance from front & side yard setbacks

Michael Armstrong, Owner

Stephanie Lientz presented the staff report.

The applicant is proposing to construct a 30' x 48' (1,440 square foot) detached accessory building southeast of the existing dwelling on the subject property. The applicant is requesting a forty (40) foot variance from the fifty (50) foot required front-yard setback requirement and a six (6) foot variance from the ten (10) foot side-yard setback requirement in the AG (Agricultural) zoning district.

Per Article VII, Section 107-132, §(e)(3)(a) and Article V Section 107-94, §(c)(2)(b)(3) of the Linn County Unified Development Code (UDC) the required setbacks in the AG zoning district fifty (50) feet from the front property line and ten (10) feet from the side property line. 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 service as a convenience to the applicant to allow the construction of a particular size accessory structure. The property, with an existing 2,275 square foot single-family dwelling with attached garage, still 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.

Michael Armstrong, owner, stated that when he purchased the property, the land had already been leveled out in preparation for a structure similar to what he's proposing, and it was approved by zoning. He explained that the topography of his property does not allow for him to put the building in any other location. Armstrong confirmed the property pins are located correctly.

Meisheid asked why the proposed building is located so close to the eastern property line. Armstrong explained that the proposed location is the only flat area.

Alden asked if Armstrong could propose a smaller building in order to meet side-yard setbacks. Armstrong said the building could be moved over to the west more, if needed. He added that if the building was re-size

Alden asked for clarification on the previous homeowner's variance request. Armstrong said the previous owners had been approved for a variance for a similar structure, leveled the property, and had intentions of constructing a building. Martin asked when this took place. Armstrong said 2005. Lientz added that variances do not transfer with ownership.

The Board deliberated.

Motion by Alden to accept the Findings of Fact, Conclusions of Law, and Decision & Order as reflected in the staff report for the Variance case JV22-0002, and to approve case JV22-0002, but with relief granted that is different than what was requested by the applicant, with a six foot side-yard setback and ten foot front-yard setback, second by Price. Additionally, the applicant must locate the nearest front property pin, along with one additional marker identifying the side yard.

Price	Aye	
Alden	Aye	
Meisheid	Aye	
Martin	Aye	
Hoover		Aye

IV. OTHER BUSINESS

V. APPROVAL OF MINUTES

The minutes of the April 27, 2022 Board of Adjustment meeting were approved as submitted.

VI. ADJOURNMENT

The meeting was adjourned at 8:09 p.m.

Respectfully submitted,

Brandy Meisheid, Chair

Jessie Black, Recording Secretary