

Dickinson County Board of Adjustment
October 24, 2016
7:00 P.M.

The Dickinson County Board of Adjustment met Monday October 24, 2016 at 7:00 P.M. in the Community room of the Dickinson County Courthouse.

Members present were Tim Hemphill, Jeff Ashland, and Neil Guess, Delmer Lee, and Roxie Reekers.

Also in attendance was David Kohlhaase, Dickinson County Zoning Administrator

Jeff Ashland, Chairman, called the meeting to order at 7:00 p.m.

First on the agenda was roll call.

Second on the agenda was new business

1st item of new business was Thomas and Janet Gannon, Variance, Lot 56, East Oak Estates, Dickinson County Iowa. Ashland read the variance request.

Kohlhaase introduced himself and began by passing out a handout to the Board of Adjustment and to the Gannons. Kohlhaase gave a brief history in regards to Lot 56 in East Oak Estates. The lot is zoned R-3 Multi-family residential and zoning compliance permit 11-94 was issued for a new house. It was found that the house was built out of compliance, and was granted a variance in 1998, allowing the house to have 4' foot front yard when 35' feet was required a variance of 31' feet. The application was approved with the stipulation that the applicant pay a \$500.00 fine. The Gannon's purchased the property from the bank in October 29, 2014. Kohlhaase went on to explain that Mr. Gannon came into the zoning office and talked with himself in regards to building a deck similar to what has been constructed. It was determined that a deck would not comply with current zoning setbacks for their district. Permitted alternatives were discussed. On July 12, 2016 the County contacted Mr. Gannon by letter for the recently constructed deck on his property since the County did not receive a zoning compliance application. Since the July 12th letter, all communication with the Gannon's was directed through their attorney Dalton Kidd. Kohlhaase said that the County did receive an email from Dalton Kidd, stating that he would not be attending the BOA meeting, but he did authorize the County to speak directly with his clients.

Ashland asked the Gannons to present their application.

Thomas and Janet Gannon introduced themselves to the BOA. Mr. Gannon stated that the only reason they contacted a lawyer was because he did not know what he was doing and he did not want to do something wrong. What he got out of the meeting with David Kohlhaase was that he could not build any farther south, he tore the top off of the existing deck and replaced it but because of the minimal size, they were unable to place a table and chairs on the deck. Gannon said that he thought that he had to get permission from the Home Owners Association, who owns the property in front of his house, to build to the west. So with permission from the HOA, and positive feedback from the neighbors, he built his deck. Looking back now he should have had the variance first. When he received the letter from the County, Gannon said he contacted a lawyer, after which he realized that he couldn't speak with the County after he retained council. Gannon went on to explain that on the original subdivision plat there is a cult-a-sack but it was never built, however it still made the original variance request necessary. He acknowledges that he is close to the property line, but he does maintain the retaining walls, so it would appear that he would own that property. The HOA owns the property from his lot line to the road and so after his conversation with Kohlhaase, Gannon thought he just needed permission from the HOA. Mrs. Gannon said that the property is a little deceiving the way it looks because they are very far away from the road. By adding a 12' x 12' deck that came out and around the front of the house it provided them the area to place a table and chairs as well as have a view of the lake. Mrs. Gannon went on to explain that their lot is unique because all of the other houses on their block face the other direction, they are the only house that faces west. To face the lake at all they have to build onto the front of their house. Mrs. Gannon said that they understand that they did not go through the right processes, but they thought by talking to the neighbors to the south, whom are here in support of the variance, as well as talking with the president of the HOA everything was okay. Mr. Gannon said that he even offered to purchase the land, but he was told that the HOA is not in the business of selling property. Mr. Gannon said that the house is out of compliance, as well as most of the driveway to the home.

Guess asked if the Gannons met with the HOA before or after they were told they could not do what they wanted to do by the Planning and Zoning staff.

Mr. Gannon said that it was before he met with the HOA. The way he understood the Planning and Zoning staff was that he could not build to the south and that he could not build to the west without the HOA's permission, who owns the land. Gannon stated that maybe he misunderstood Mr. Kohlhaase.

Guess asked if the deck itself stays within their own property, and if it does by how many feet.

Gannon replied that the deck does stay on his own property by about 2-3 feet.

Guess asked for the reason as to why the HOA would not sell the property between the lot line and the road, where the retaining walls are, to you.

Gannon said that the response he received from the HOA was that they are not in the business of selling property, other than that he did not know, but Mr. Hollday is here tonight.

Ashland said that one of the things we, the Board of Adjustment, is charged with determining is letter K on the application which states, "give reasons the circumstances unique to you were not caused by your actions", but the reason you are here was because of your actions.

Gannon said that he did not place the house where it is, and any deck on the front of the house would be out of compliance.

Ashland stated that you did speak with Mr. Kohlhaase and he said no, and then you went to the HOA and they said yes.

Gannon said that what he got out of the conversation with Mr. Kohlhaase was that he could do something, but he either had to buy property from the HOA or get permission from the HOA.

Kohlhaase said that some of the alternatives that were discussed were open and unclosed stairs, which can project into the required yard, as well as ground level patios, less than 12" off the ground, which may be built up to the property line without a permit.

Mrs. Gannon said that the misunderstanding came from originally wanting to build to the south, not to the west.

Guess said that you mentioned earlier that your house was out of compliance.

Gannon said that he means to close to the property line.

Guess said that you had a variance for that in the past.

Gannon said that he did not, someone before him did.

Guess clarified that the variance runs with the land, so your house is out of compliance but it received a variance for it to stay in the footprint that it was built. So currently it is your deck that is out of compliance.

The Gannons did state that they were surprised that the variance was granted at that time, then they asked if the variance was for the house, driveway and retaining walls.

Kohlhaase explained that the variance was for the house, so anything more in reference to decks or additions would require an additional variance. Kohlhaase went on to say that the roads in East Oak Estates are private and to the best of his knowledge there has never been a cult-a-sack as originally platted. He said that there could be a re-subdivision of the development to clean that up, but that would be up to the association. At the time when the variance was granted for the house, there was an agreement made that ran with the property in reference to the land in the front of the house in regards to the retaining walls and the driveway. That agreement is in our files as well.

Guess asked if the cult-a-sack were to be vacated and the through road extend to the standard width, would that solve the problem.

Kohlhaase said that depending on where they placed the new property lines, it could help or solve the problem.

Ashland read the correspondence from the file. He then opened the floor to the public.

Don Holladay, 17075 Walnut Ln., East Oak Estates President, introduced himself to the Board. He said the home owners association board members met last month, and they had no problems the way the deck was built, it looks very nice. The neighbors accepted the deck and there were no objections brought to the Board. He stated that they will not sell the land because it would open up a nightmare.

Guess asked why.

Holladay said because they have 65 houses there right now. The house was built wrong in the first place, it's not the Gannons fault, they are improving the house. It should have been caught then, and fixed, but it wasn't.

Don Drennen, 17093 Lakewood Dr., said he lives right across the street from the Gannons, and as someone said before these are all private roads, and the County Engineer came out some time ago to look at taking over the road, but because of width, grade and other things they would not meet the minimum criteria for the County. If one would attempt to do the cult-a-sack now, it would cut into the Gannons house which is impractical. The HOA several years ago, when the cult-a-sack was planned extended the road, filled in a culvert and addressed the drainage, so the cult-a-sack was no longer needed. They have no objection to the deck, but what he would add, the house was vacant for two years, and prior to that there were drugs and the sheriff was called several times. Since the Gannons have moved in, there have not been any problems. The deck has added to the neighborhood.

Trent Blair, 17087 Basswood Ln said he lives to the south of the Gannons, and was the one who told the Gannons to build a bigger deck and to build as far south as they needed. What the Gannons have done to that place is unbelievable. The grass was tall, and there was probably 3 years where he kept mowing more and more of that property before they bought it.

Guess began by asking Kohlhaase if the original variance that was granted was 31' feet.

Kohlhaase said that is correct.

Guess asked how much setback did they have left, 4 feet.

Kohlhaase said that 4' feet is correct.

Guess said that if they are reading their statements correct the deck is 35' feet from the road.

Gannon said that according to the drawing that was done that came with the house.

Guess said then your deck overhangs on to the HOA property.

Gannon said no, the entire deck is on his property.

Guess asked Kohlhaase if the variance was for the west side of the property.

Kohlhaase said yes the variance was for the west side, and it could that be a generous variance.

Guess asked where the deck is at in relation to the property line.

Kohlhaase said about 3.5 feet to the property line to the west and 2' feet to the south property line.

Guess asked if they are roughly the same distance as the previous variance.

Kohlhaase said yes. Everything we have is based upon the information provided to us by the applicant and saying it respectfully, it was a struggle to get those measurements from Mr. Kidd the attorney.

Guess moved to vote on the variance, with the understanding that the HOA Board in the future does not give advice that they cannot give. Any variance needs to go through the zoning office.

Lee seconded the motion. All were in favor.

Vote was recorded as 5-0 approval, Ashland approve, Lee approve, Guess approve, Reekers approve, and Hemphill approve. The variance was granted.

2nd item of New Business was NorthStar Wind Project, LLC and RedRock Wind Project, LLC owned by Tradewind Energy, Conditional Use for 5 Meteorological Towers in Dickinson County. Ashland read the conditional use request.

Al Blum introduced himself and explained that he was the founder of the NorthStar and RedRock project. The project spans both Dickinson and Emmet Counties. Blum introduced Jeff Hammond with Tradewind Energy, who passed out a packet of information to the Board.

Jeff Hammond, Development Manager for Tradewind Energy began by giving some background information about Tradewind Energy. Tradewind Energy is one of the largest and most successful wind energy companies in the country, they were founded in 2002 in Lenexa, Kansas. Hammond continued by giving an overview of the planned temporary meteorological towers. They are approximately 197 feet in height, uses tilt up technology and does not have a cement base. The tower is secured to the ground by guy wires, and will be marked accordingly with both the FAA and Dickinson County regulations. There are no additional infrastructures or utilities required, it is a standalone tower. The purpose of a met tower is to determine the key factors of the wind in the area, it will measure when and how much the wind is blowing. The towers need to be up for at least a year if not more to receive a good understanding of wind and temperature, they will also include acoustic bat detectors to site the towers in areas without bats. Included in the packet was a location overview for the Dickinson County towers. They are proposing to re-instrument two existing towers, MET 0167 and MET 0367, and are proposing 3 new met towers, MET 0467, MET 0567, MET 0667. There are maps included in the packet detailing the nearest roads and dwellings which exceed the minimum setback requirements. They are setback more than 500 feet from any dwelling, they are no less than two times the total height and/or more than 1200 feet from any human occupied dwelling. The met towers have 8 different anchored sites (2 guy wires in each direction). Tradewind Energy has worked with the property owners and anticipate that they will disturb far less than an acre of land. Once the met tower is no longer in commission for more than one year, the met tower will be removed and the land returned to its original state. These towers do not require FAA notification because they are under 200' feet. Tradewind Energy is looking to install approximately 195 turbines, but the final numbers will depend on the type of turbine chosen. The towers will be distributed over 190 landowners and will provide enough power for approximately 130,000 homes. Hammond said the he and Amber Zuhlke, an environmental manager for Tradewind Energy, have met with the Iowa Fish and Wildlife and expect to have no impact on endangered species of birds or animals, based on third party studies. In conclusion, they are asking for a conditional use for five temporary met towers for five years.

Ashland asked if the FAA markings will be like the towers in existence.

Hammond said that is exactly right.

Guess asked if they have signed leases for all of these towers.

Hammond replied yes that they have signed agreements with all of the landowners.

No written correspondence.

Lee asked how long will the temporary towers will be in existence.

Hammond said that they are asking for five years.

Kohlhaase said that in the Zoning Ordinance 102, if one looks at the definition of WECS, wind energy conversion systems, it includes met towers. In Article 21, Conditional Uses, Section 5D there is a list of 13 requirements, and what number one says is that the following requirements may be varied from if allowed by the Board of Adjustment. Kohlhaase said his recommendation would be based on the intent of the ordinance and due to being temporary met towers, Zoning Ordinance 102, Article 21, Section 5D numbers 2, 3, 6, 11, 12, 13, are not applicable. The Board will see those and the rest of what Hammond has talked about when they make application for the wind farm itself. The Board of Adjustment is the only entity who can say that those items are not applicable.

Guess asked if they can make a motion for all 5 towers together or should they be separate motions.

Kohlhaase responded that the attorney's opinion in reference to situations like this or when they present the wind farm itself, there will be one conditional use application, so in this particular case it will be one application, and that is what the Board is approving or denying tonight. If

approved, we will issue one conditional use permit and the zoning compliance permits for the towers.

Guess motioned to approve the conditional use with the following stipulation that due to these being temporary met towers, Zoning Ordinance 102, Article 21, Section 5D numbers 2, 3, 6, 11, 12, and 13 in the Board of Adjustment's opinion are not applicable to this application.

Lee seconded the motion. All were in favor.

Vote recorded as 5-0 approval. Ashland approve, Lee approve, Hemphill approve, Reekers approve, and Guess approve.

Third on the agenda was old business.

Ashland brought in an article written about a person he knew over in Worthington, whom was killed in a plane crash because he hit a guy wire. Ashland was really glad to hear that the towers from Tradewind Energy are going to be marked as well as they are since one of the things the Board is responsible for is safety. Discussion on markings of towers and safety regulations.

Fourth on the agenda was approval of the minutes from July 25, 2016. Guess motioned to approve the minutes as written. Hemphill seconded the motion, all were in favor.

Fifth on the agenda was communications.

Kohlhaase said that we have been informed the Iowa Supreme Court has upheld the District Court's decision in reference to the Mohling case. Kohlhaase believes there is a 30 day period in which the decision can be appealed, but we believe that date has lapsed. The Mohlings may now construct their detached garage.

Sixth on the agenda was report of officers and committees. There was none.

Seventh on the agenda was unknown business. There was none.

Eighth on the agenda was adjournment. Hemphill moved to adjourn, Lee seconded the motion. All were in favor.

(For more information see BOA 10 24 16)