

DICKINSON COUNTY BOARD OF ADJUSTMENT
Monday, June 27, 2011
7:00 P.M.

The Dickinson County Board of Adjustment met Monday, June 27, 2011 at 7:00 p.m. in the community room, Dickinson County Courthouse.

Members present were Don Oleson, Jeff Ashland, Bob Duncan, Mary Dannatt, and Dennis Jackson.

First on the agenda was roll call. Oleson read the Board of Adjustment opening statement.

Second on the agenda was new business.

- 1st item of new business was Michael and Rose Marie Anthony, a variance for East Okoboji Beach, Unit 1, Block 8, Lot 11. Oleson read the description of the variance.

All members had viewed the site.

Mike Anthony said they have had a summer place in East Okoboji Beach for 25 years. They have a house on Shoreline Drive. They thought this would make a nice retirement home. They have presented their plan to the neighbors and have 15 signatures who thought it was a good idea. They found they couldn't stay in the setback bounds. The back side of the lot has a creek running through it and angled lot lines. They stayed in the line of sight with the neighbors, so the house will be in line, even slightly behind. They are close at the rear at 10' at one point, but have 20' on the other side. They have plenty of off street parking. They are taking water off the roof to a retention pond to the front. He has talked to Hawn about dirt removal and getting dirt built up between the two cabins so they can retain the water so it doesn't build up a silt bed. A couple neighbors wish to build up their lots also.

Jackson told Anthony he would need to clear all dirt work with the County Engineer.

Anthony said his contractors would work with the engineer. The driveway was put in the center of the lot off to the side. The lot line on the aerial is deceiving. It is actually farther north. The propane tank and water line of the neighbor is on their property.

Oleson said they have a very nice house plan. His concern is, this is a small lot and this is too large of a house for this lot. He very concerned with environmental problems with that creek. A good contractor could protect the house from dirt and keep building debris out of that drainage but with a poor contractor, it could be an environmental disaster. He has concern of building too close to that drainage, and debris going into the drainage. During a heavy rain if that bank is breached, that whole thing would go away.

Jackson asked Anthony what was the creek like Monday after the 4" rain?

Anthony said it was bank full. It was coming back and up around the front. He said that is being addressed by the dirt contractors. He spoke with Jason Carney, a contractor about getting a silt fence in place.

Oleson said it will take extreme measures to keep silt out of that drainage area. He asked Anthony if he has looked at larger lots or thought about scaling the house size down to fit the lot?

Anthony said when he laid out the lot and laid out the house line of site he was trying to make it fit back between these two cabins and the back lot with extra room around the creek from the other side. This side toward the shoreline is a patio. The rest is just bush in here. This is set up so they would have this extra buffer between us. They do own the house behind it to the west. This has always been their summer place.

Oleson said again his concerns are the size of the home and the environmental concerns.

Duncan said the Anthony's purchased the lot in 2008. What was the lot like then?

Anthony said it was about 1 ½ feet down from the level it is now and they had to bring in dirt and rock to build it up. He explained the dirt work.

Duncan said when they changed the elevation, they forced the water to go up into the creek. He is concerned about extra fill forcing water onto the neighbors.

Anthony said they have talked about taking out the bridge and putting it on the other side of the cabin and fill and build this part of the creek bed back up into lot again.

Oleson asked if they have asked Jacobson Westergard what is the high minimum flow and low flow area of the creek.

Anthony said no. They had them set an elevation.

Oleson said they do have a copy of a letter saying they are basically one foot above flood plain.

Jackson said the application says the lot would be unbuildable without a variance. They should have known that in 2008 when they bought the lot. He asked Anthony if he had anyone figure what size house would fit on the lot.

Anthony said with the setbacks taken off, there would be little left to build on.

Oleson said this is a legal, buildable lot, but the concern is building a reasonable size house.

Ashland said he commends the Anthony's for lining up with the neighbors. He asked if they have a concern with the environmental impact and any thoughts how to remedy that during construction.

Anthony said the creek dries up in August and September. That's when they will do the dirt work. They would install silt fence around the area. They are working with local contractors that are experienced.

Oleson said they would need to put up additional orange fencing to catch any construction debris.

Anthony said he has been in the plumbing and heating business 35 years and is very meticulous.

Duncan said to Anthony that he must realize raising the lot with fill, he will have a liability there.

Anthony said in the flood of 1993, water didn't come up on the lot.

Oleson asked for questions from the public.

Nicky Grafton owns four lots on Frank Street. Every neighbor is anxious to see new construction. They have no problem with the Anthony's plan. Any new construction makes their neighborhood better. Anthony does meticulous work.

Margery Rolefson said her son Tim lives directly across the street. He is not in favor of a house that big because when the creek gets high it nearly floods his (Tim's) house.

Darla Jacobs said she lives directly across the street. She would like to see the house be smaller. She had photos taken before the recent rains which show water standing in ditches. These were taken since the road was built showing the trouble with the culverts that were not put in right. The area where they plan to put the garage is near standing water. Spring snow thaw floods the road. If the house is built there, where will the water go?

Dwight Jacobs said he owns a two story Morton Building and worked with Dave Kohlhaase on a building that was within specifications. He doesn't want to see it ruined by a large house built in the waterway.

Duncan asked how do footings in a wet area stand up.

Anthony explained with photos the problem they have with the way the culverts were put in and how this property needs to be built up.

Saunders said maybe it makes some sense to have an engineer explain how these hydraulics work. Perhaps Anthony should come back with some more information.

Oleson said he would like to have more study done on the impact of how filling this lot will affect the neighborhood.

Ashland agreed.

Anthony asked to have his application tabled to get some more engineering study, and how to protect the creek during construction.

Jackson told Anthony he should look at scaling back the size of the house.

Ashland said regarding the picture of the snow melt, does Anthony have a concern with that coming toward his house?

Anthony said the manhole is at 1400 elevation, the lot is at 1401, and the house would be 8" to 12" higher, so he is not concerned.

After some discussion, Ashland moved to table the Anthony variance request until more engineering study can be done. Jackson seconded. All were in favor. The variance is tabled until next month.

- 2nd item of new business was Scott and Diane Benjamin, conditional use, Lot 5, Section 26, Superior Township.

Benjamin said they have had their winery business for 9 years. They moved in a grain elevator and then thought of a bed and breakfast. They want to have two rooms built inside the grain elevator. The ground floor would be wine storage, the next floor the winery, and the next two floors would be bed and breakfast. Height would be 30' at the highest level.

Oleson said this project appears to be 80% built.

Benjamin said the winery is agriculturally exempt. He made an incorrect assumption that the addition of the bed and breakfast to the winery would be exempt too. Dave Kohlhaase brought it to his attention that he would need a conditional use permit. They had the state rules covered, but didn't know about zoning.

Oleson said he has concern with safety. The grain elevator is 24' x 24' x 50'. This area is served by the Superior Fire Department.

Benjamin said he called the Superior Fire Chief. They work with the Spirit Lake Fire Department and they have a ladder that would reach to 160'. The level of the top bedroom is at 30'.

Oleson said he noticed a hand rail system on the outside of the granary.

Benjamin said the deck out front is the winery deck. The back decks are going to be 50' in the air. They are thinking they will have 48" tall steel railings on the decks. The upper decks will not be open to the public. The bed and breakfast guests will have access.

Oleson asked if a sprinkler system will be installed.

Benjamin said a bed and breakfast is required to have a fire extinguisher on each floor and a fire alarm.

Jackson asked if all wiring has been inspected.

Benjamin said it is all being done by a licensed electrician. It has been inspected twice so far.

Oleson read correspondence received.
Dave Rowley – in support of the bed and breakfast.
Russ Ochsler, KKOJ radio – in support.
Dr. Kevin Zitterich – in support.
Sandie Smith – in support.

Ashland moved to vote on the conditional use application as presented. Duncan seconded. All were in favor. The vote was recorded as Don Oleson – deny, Jackson, Ashland, Duncan and Dannatt – approve.

Oleson read from the vote result form and the building completion deadline.

- 3rd item of new business was Royal Oaks and Linda Fickbohm, a variance for Royal Oaks, Lot 5.

Linda Fickbohm said they want to place a new mobile home on their lot. They are requesting a 5' variance in the NW corner and a 3' variance in the NE corner. They are maintaining a 10' front yard. This is mainly for safety. They have children ranging from age 2 to 14. They are proposing placing the smallest standard home available. The setback area has not been maintained in the past, but they will keep it maintained. They are willing to put up a living fence if the East Oaks neighbors want. The main living area will be on the south side. There is an emergency exit only on the north.

Oleson asked if the home will be placed on a foundation.

Brent McCoy, manager of Royal Oaks, said it will be placed on piers and skirted.

Oleson asked if they would be blocking the flow of water from the next trailer.

McCoy said it drains backwards from the north and it will be graveled.

Oleson asked about any past water problems.

McCoy said none. If they have any water standing, they take care of it.

McCoy said a Morton or maintenance building could be 3' from the lot line. This is the shortest lot in the park, and we are placing a 40' trailer, the smallest you can get.

Oleson asked how do you determine the lot lines?

McCoy said there actually are no definite lines.

Oleson asked for questions from the public.

Jerry DeNoble said he lives in East Oak Estates just to the north of this lot. They went through this three years ago with the same variance. There is water that runs between us. They feel this is too close. They put a new trailer in and gutters on that goes right onto our driveway. Golf courts come through. They ask the board to deny this variance.

Dave Smidt, 17291 East Oaks Estates. They have a year around residence and the setbacks are there to protect them as well. They ask that you keep to the 10' requirement.

Jim Mulder, 17285 Lakewood Drive. They own property adjacent to Royal Oaks. There has been a history of encroachment. Lot of unuseable materials stored on their property. They are concerned granting a variance will set a precedent.

Oleson said that each variance application is considered on its own merit.

Sherri DeNoble said they are excited to get some new neighbors. They had a survey done when they bought in East Oaks because they knew some of the pins were under trailers. They are also concerned with drainage. The skirting has pushed water toward their house.

Kohlhaase said there are lot lines for the perimeter of Royal Oaks, but not for the individual lot lines.

McCoy said there is drainage from the DeNoble's house and the mobile home. They drain on each other.

Oleson said to McCoy, as you drive in there you have some elaborate sluices. Someone has gone to a lot of work to make these culverts. It could be feasible they could require gutter and downspouts and drainage. He asked McCoy if they would consider going 30' - 40' to the south to the drainage area. He would like to see some requiring of downspouts taking the water to the south.

McCoy said he doesn't feel there is any water problem. It goes pretty much to the west. The downspouts go underneath the deck.

Oleson read correspondence from adjacent property owners Lawrence and Marcia Weberg who asked that the variance be denied.

Jackson moved to add a stipulation to any approval of the variance that eave troughs and downspouts drain to the south and west and be cleaned out and kept in working condition. Duncan seconded. All were in favor.

Duncan moved to vote on the application with the stipulation. Jackson seconded. All were in favor. The vote was recorded as all approve.

Oleson read from the vote result form and the building completion deadline.

- 4th item of new business was Alfred V. Steiner, appeal of Zoning Administrator's decision, Triboji Beach, Block 32, Lots 8, 9, and 10.

Kohlhaase said Mr. Steiner has requested to postpone until next month. All board members were in favor of continuing to next month.

Third on the agenda was approval of the minutes of May 23, 2011. Oleson had one correction. During discussion of the Jeff Hartman variance, he had said he wanted their storage shed to go away. Ashland moved to approve the minutes as corrected. Dannatt seconded. All were in favor.

Fourth on the agenda was communications. Duncan and Ashland said they would not be present at the July 25th meeting. It was agreed to change the meeting to Wednesday, July 20th so a full board could be present.

Kohlhaase said Ted Weismann with Nextera Energy is requesting an extension for issuing the zoning compliance permits for the High Point Wind Farm project. He will be on the July 20th agenda.

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

Sixth on the agenda was old or unknown business. Barb Woodley passed out the letter dated June 16, 2011 from ITC Midwest of the update on the Cayler Substation construction progress. Dave Kohlhaase reported on the planting plan. He read to the board members the stipulations that they had made for the plantings. ITC Midwest has met with Gary Fisk of Ferguson Garden Center who has given them two options with different sizes of plants. Kohlhaase said it is not his place to tell them what size and which tree as long as it is planted as per the stipulation. Fergusons said the soonest this would be accomplished is mid to late July. Kohlhaase said that time of year may require a lot of watering, but Ferguson is talking about watering too. Oleson asked if the board had stipulated sizes. Kohlhaase said no. The Board of Adjustment members agreed this was fine as long as the plantings meet the stipulation.

Seventh on the agenda was other. Oleson said regarding the Hartman variance, when he viewed the site he found they were outside the agreement to park construction vehicles and equipment on the neighbor's property. Kohlhaase contacted them and it was taken care of.

Eighth on the agenda was adjournment. Ashland moved to adjourn. Duncan seconded. The meeting was adjourned at 8:55 p.m.