

DICKINSON COUNTY BOARD OF ADJUSTMENT

Monday, July 27, 2009

7:00 P.M.

The Dickinson County Board of Adjustment met Monday, July 27, 2009 at 7:00 p.m. in the community room, Dickinson County Courthouse.

Member present were Dennis Jackson, Don Oleson, Bob Duncan, and Wendell Williams. Absent was Jeff Ashland.

Don Oleson, 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 Jerry and Mary Freeman, a variance for Lot 18, Block 35, Triboji Beach. Oleson read the description of the variance.

All members had viewed the site.

Jerry and Mary Freeman said they have lived in this house permanently for 1 ½ years. They are requesting the variance for safety reasons. The lot is small - 25' wide. The previous driveway and sidewalk was rock and was somewhat of a safety issue. The patio allows better access to their home. This is not a large issue as there are a number of people living full time in Triboji that have the same ground coverage. They and the contractor didn't know about the ground coverage requirement. They have placed cement instead of rocks. Dennis from Lakeside Lab is helping them design a rain garden and Tory Christensen has designed a drainage plan. The Freeman's submitted a copy of their drainage plan to the board members and explained that it includes two rain barrels. One is a 70 gallon barrel.

Oleson asked when the concrete was done.

Freeman said in July 2008. The driveway was done at the same time. Mrs. Freeman's mother walks with a cane and it was hard for her to walk on the rocks.

Kohlhaase said that anything less than 12" is not considered a structure, so concrete can be poured without a permit. Since there was no permit requested, the Freemans were not informed about the ground cover requirement.

Oleson said he understands how it has gotten to this point. He asked the Freemans if they ever considered permeable pavers

Mrs. Freeman said they didn't know anything about those types of items at the time they did their concrete.

Kohlhaase said the Freemans have been researching their options. They decided to do a drainage plan and apply for a variance.

Jerry Freeman said the county engineer, Dan Eckert, is discussing putting a drainage tile along their road.

Kohlhaase said that Tory Christensen and his wife are landscape architects and have designed a rain garden for the Freemans. The Freemans are also working with the county on the tile and working with Steve Reighard, IDNR officer from Gull Point.

Oleson read correspondence from Steve Reighard which said the water runoff is no different than before the sidewalk and patio was installed.

Oleson advised the Freemans that there are only 4 of 5 board members present. They have the right to table the variance until a full board can be present.

Discussion followed of how the water will disseminate from the rain barrels and the cost of a rain garden and barrels versus permeable pavers. Freemans said Vugteveen gave them an estimate of \$13,000 to install the driveway with pavers. Discussion of the direction of the water during a hard rain, and a concern of the rain garden at the top of the bank causing erosion.

Abby Walleck, attorney for the Freemans, said there is also a civil lawsuit between the neighbors. The original plan was to tear out the cement, but the contractor couldn't get the work done with the bad winter. The Freemans thought about their options awhile and she was also out of the office for a couple of months. It all took extra time.

Comments were then taken from those in attendance:

Tom Christensen lives two doors south of the Freemans. Extra water from their property goes down to his property south and he takes care of it.

Leah Ward, neighbor to the Freemans, said she is asking that the Freemans remove their concrete or work on a better drainage plan. The hard surface causes a lot of runoff and there is potential for water damage to their basement. She urged the board to work out something.

Mary Freeman said two months ago, their contractor put in curb material to divert the water from the Ward's garage.

Chuck Brown, 20807 S. Lagoon, said if they tear out the concrete and put in permeable pavers, the water will still run across there.

Shirley Jager, lives on Lagoon Drive. She said there have been some heavy rains lately. Is there any water in the Ward's basement?

Leah Ward said they haven't yet had any water in their basement.

Dan Sievert, War Eagle Drive, said the faster the water gets off there the better. It is carried away so it can't get into the Ward's basement.

Marv Klomp said the water starts at the top of the hill, runs down the street and across Tom's property and then on to him. It is a county road problem which the Supervisors need to address.

Tom Christensen said the county keeps building up the road with blacktop which creates more runoff.

Jerry Freeman said the street tilts to the west. Both ways the runoff comes back and falls on the Ward's garage.

Leah Ward said the garage is one aspect. The concrete they are most concerned about is right next to their foundation and drainage from the lot line onto the foundation of the house.

Kohlhaase said to correct drainage or subsurface drainage into people's basements, the best thing to do is to take water subsurface and get rid of it. There has to be a better solution than having the patio cut back and a small area draining causing them both problems.

Discussion followed of how to correct the slope of the concrete to prevent drainage, the possibility of a permanent curb, and if the rain garden will be ineffective in a larger rain event.

Mrs. Freeman said she wants to continue working with experts in rain garden construction.

Michelle Linder was concerned about standing water in a rain garden.

Kohlhaase explained rain garden construction and that water can stand for some time.

Leah Ward said the Freemans placed a curb structure that will need to be continuously maintained. Beck Engineering said there needs to be a continuous concrete curb in place.

Oleson read all correspondence.

Freeman presented photos to the board of what happens at the Ward's house when it rains.

Oleson suggested the concrete be replaced with some or all permeable pavers which would give the Freemans a hard surface and they wouldn't need a variance, or to take out the patio and sidewalk which would lessen the variance.

Kohlhaase asked when the civil case is being resolved.

Walleck said there is a court ordered settlement Friday, July 31st. There could be a solution reached. Her advice to the Freemans and the board is to table for a month. They may reach a resolution and have more time to research permeable pavers.

Oleson felt it was not in the best interest to table and ask a judge to do this board's work.

Williams said he was uncomfortable making this a piece meal deal.

Oleson said the board must look at this as if it was not already there.

William said we also must uphold the zoning ordinance. The contractor should have checked before building and there should be not more than 75% covered.

Duncan said he would rather wait until after the court meeting and see what happens.

Oleson said the court may have only preliminary findings or it may get postponed. The civil litigation is outside the Board of Adjustment's jurisdiction.

Discussion of whether the board would be liable if their proposed remedy would cause damage to the Wards. Mr. Freeman said he would rather remove the driveway than the patio.

Oleson felt the driveway had too much slope to effectively hold back extra run off.

Mrs. Freeman requested that the board table their variance application until a full board can be present.

The board members agreed to table this application to the August meeting.

- 2nd item of new business was Mark Wagner, a discussion and follow-up of Zoning Compliance Permit #147-08A.

Mr. Wagner said at last month's meeting, he was given three options: to proceed with the project, to request an extension, or fill the foundation, return the lot to original condition and put the project on hold.

He has contacted his contractors and they are available. He introduced his contractors and home mover. He is requesting if there is any way they can proceed. The foundation is in good condition and the gravel base is ready to go.

Oleson asked if anything has been done on the lot in the last month.

Wagner said no. He has been doing a lot of leg work and getting contractors lined up. He requests an extension for his building permit.

The foundation contractor said it should take until the fourth week of September to finish the foundation. They would have started two weeks ago, but Mark had to come before the board before he could proceed.

The house mover said it can get done in 30 days. As soon as the pad is poured, he can move the house over.

Williams thought after granting the variance in November, with a July 31st deadline, the building would be done by now.

Kohlhaase said the board approved three extensions. The last extension was up in spring or early summer. When Wagner was not finished, his permit was revoked and charges were filed. The charges are on hold because of the granting of an extension to July 31st. The board can extend the permit if they choose to. They have to say the permit will be valid or not valid after August 1st.

Oleson said the board has given extensions three times. They have bent over backwards for Wagner to get done. They were very emphatic that this (the one granted in November) was the last extension. The board is now looking out for the neighbors to get the lot back to original condition.

Matt Marnach, 15400 250th Avenue, is representing Lighthouse Landings. The neighbors across the street have been looking at an unmaintained construction site for three years. There are rocks piled up, rebar sticking out, and a skid loader has been sitting there for three years. Weeds grow up and the lot is mowed about once a month. They want something done. A house placed there would make their community better, but how long will it take to have a nice home? It's been unsafe for three years. There is no fence around it.

Tim Sylvester said he's seen bikers and runners along there who have slipped and fallen on the rocks.

Williams said the board can't take any action. There was not a public notice.

Oleson told Wagner the board gave him the benefit of doubt. Now they have to look out for the neighbors.

Kohlhaase said the office has received a lot of questions from neighbors on the status of the Wagner project and they know the deadline is August 1st.

Karen Wagner said she'd like to apologize to the neighbors. One thing she knows about her husband is that he is a perfectionist and whatever happens, it will be a beautiful lot.

Tim Sylvester asked if the Wagner's can reapply.

Kohlhaase said by August 1st, if the lot is not in preconstruction condition or if the house is not on the foundation and all outside finished, charges will begin to be filed and they will be filed every day in an amount up to \$500 per day. Ultimately it will be up to the judge. Could they start again? Yes. Tonight the Board of Adjustment can take no action as there was no public notice.

Wagner said then they will comply with the permit as it stands.

Third on the agenda was approval of the minutes of June 22, 2009. Duncan moved to approve the minutes as written. Williams seconded. All in favor.

Fourth on the agenda was communications. There were none.

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

Sixth on the agenda was old or unknown business. There was none.

Seventh on the agenda was other. There was none.

Eighth on the agenda was adjournment. Jackson moved to adjourn. Duncan seconded. All in favor. The meeting adjourned at 9:20 p.m.