

DICKINSON COUNTY BOARD OF ADJUSTMENT
Monday July 28, 2014
7:00 P.M.

The Dickinson County Board of Adjustment met Monday July 28, 2014 at 7:00 P.M. in the community room of the Dickinson County Courthouse.

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

Don Oleson, Chairman, called the meeting to order at 7:00 p.m.

First on the agenda was roll call. The opening statement was read by Oleson

Second on the agenda was new business

- 1st item of new business was Rex & Susan Wangler, Variance, Triboji Beach, Block 35, Lot 7, Dickinson County, Iowa. Oleson read the variance requested. All present board members viewed the site.

Jason Eygabroad with Beck Engineering represented Rex & Susan Wangler. Eygabroad began by explaining that the lots in Triboji are somewhat restricted because of the original platted size, and that the Wangler's property has additional setbacks because it is located on a corner. Eygabroad continued to explain that according to the Dickinson County Zoning Ordinance 102, corner lots have two "front" yards, and thus are more restricted than many other lots in the area. He said that the variances may seem extreme in number, but the proposed structure is actually less invasive than the current structure.

Oleson told the Wangler's that according to the variance instruction that the staking needs to take place 1 week prior to the Board of Adjustment meeting.

Eygabroad said they tried to stake the lot with as little intrusion to the area as possible, but after speaking with David Kohlhaase, Eygabroad said he was out there within a half an hour to correct the staking.

Dannatt asked the Wanglers, based on the information you have presented, and since the property was purchased in 2003 what has changed that you now want to build a new house?

Rex Wangler said his family has always vacationed in Okoboji, and he and Susan bought the property with the intention that at retirement age they would relocate permanently to the lakes area. This new home would be their primary residence, and will not be rented out like the previous residence. A hardship that they have dealt with is that almost every year they have owned the house, there has been water damage. In May 2005 the Great Lakes Sanitary Sewer District had to pump the sewer in front of their home due to the sewage backing up. In August 2007 there was heavy rain, and water came into the west part of the house. Then again in July 2011 the Lagoon flooded, and the water came across the street and into their home. The house needs extensive improvements both inside and out, and it is uninhabitable in the winter months. It needs new sewer lines, insulation, new plumbing, and walls. They considered jacking up the existing structure, but after evaluating the cost, they found the repairs would cost 70% of a new structure. The improvements need to be done, they could move elsewhere, but they love the area, and feel it is a great opportunity to enhance the neighborhood.

Oleson asked where do you park?

Wangler said that they park in the public parking lot across the street, and the new 2 car garage would be 24' x 24'.

Duncan asked the Wangler's if they researched the property in 2003 before they bought the property.

Wangler said they did, and they were told the house did not have any issues.

Oleson asked how the Wangler's would protect the neighbors from watershed that would result from raising their property.

Eygabroad said they would construct a swale, or anything necessary to protect water from running on to the neighbors property.

Duncan asked if the neighbor's water naturally flows toward the Wangler's home.

Eygabroad said the flow from the neighbor's property goes around the house.

Duncan asked that if the Wangler's raise their home, wouldn't the neighbor's water would back up into their homes.

Rex Wangler stated that they are only raising the house 18 inches, not the land surround the house. The water would still naturally follow around the house, but they would take additional measures to prevent the water from backing up into the neighborhood.

Jackson said something that he would do, would be to shorten the structure by 12'.

Wangler stated that the lower level is only 24' x 40' feet and he feels it is modest in size.

Eygabroad interjected that a 5' setback is a very common, however because this lot has 2 fronts the additional required yard is more than what the typical lot in Triboji has to adhere to.

Duncan said that when the board considers a variance, the owner has to show a hardship, when you bought the property in 2003 did the house have drainage issues?

Wangler replied that they were not aware of the flooding.

Duncan said that he does not see the drainage as a hardship. He then asked the Wangler's there are any additional hardships.

Susan Wangler mentioned that in 1993 someone said the previous owners did something to prevent the 100 year flood from reaching the property, and in 2003 when they bought the property they were lead to believe that there would not be any additional flooding issues.

Duncan said that the purpose of a variance is to approve the minimum setbacks, and what the Wangler's are asking for is a maximum variance.

Rex and Susan Wangler then showed side by side comparison of the existing structure to the proposed structure. They explained how the proposed structure has a smaller foot print then the existing structure. They also noted that one corner of the proposed structure is greater than the existing, but it is the only place where the proposed structure is greater than the original.

Duncan (referring to the site plan) if you built anything within the dotted lines, you could build anything, but what you are asking for is too large for the size of the lot.

Wangler asked Duncan which variance gives him the most trouble.

Duncan responded that they all do.

Oleson stated that when the Wangler's purchased the lot in 2003, the cabin was a 2 or 3 season home, and they can built within the current foot print, but the proposed structure is too large for the lot, but he is concerned about the drainage to the neighbors.

Duncan stated that when someone increases their elevation of the house, the excess the water will flow on the neighbor's property.

Eygabroad said we have measures we can take to make sure the drainage does not affect the neighboring properties.

Kohlhaase stated that this property is in a flood plain, and if a flood came and damaged 50% or more of the current structure, the Wangler's could rebuild, but they would have to rebuild to the structure to 1 foot above the grade, and would be back in front of the Board of Adjustment to seek a variance.

Oleson asked if the Board has any other questions, they did not.

Oleson asked for any comments from the public.

Cory McCartan from the Iowa Department of Natural Resources, stated they would like the Wangler's to abide by the current zoning laws, and the DNR opposes any new construction that would contain a variance.

Cathy Huff, said they are neighbors to the west of Wangler's, and they have owned their property since 1979. The Huff's reviewed the site plans, and they oppose the variance request. They feel the lot is too small, and they are concerned about drainage, as well as the the use of the property. Mrs. Huff said that they only see the Wanglers when they come to clean the house after "check out" time, and the Wangler's renters cause unnecessary congestion with cars, boats etc. in the neighborhood.

Larry Koopmans who lives at 20808 Lagoon St. said that the variance request is quite extensive when someone asks for a variance on each side of the house. He said after coming to the meeting he thought that there is supposed to be 8 feet between the proposed structure and the neighboring house, but because of the allowed projected items in the side yard, it is only 30 inches and that concerns him. He said that he is also not happy with the weekly rentals, which has been happening for years.

Correspondence is read by Oleson.

The Wangler's then presented a lesser variance to the Board, the new proposal would only include 3 variances. The Wangler's would take any necessary measures to control the water on the neighboring properties.

Duncan asked the DNR if the new proposal, as stated, would be acceptable.

McCartan said the DNR does not object to a structure with the same foot print, but prefer no variances be granted for the property.

Oleson said he realizes that this is a platted buildable lot, and the Wangler's need to be able to build something there. But he cannot support the proposed structure.

The Wangler's then requested the proposal to be tabled to the next meeting.

Oleson honored the request to table the application.

- 2nd item of new business was an Administrative Review of Permit No. 49-14, Property of Allan and Sandy Wiegert, Acorn Ridge Estates, BLL Lot 78, Spirit Lake, IA. Appeal filed by Larry & Desi Suter of Acorn Ridge Estates, BLL Lot 79, Spirit Lake, IA.

Edward Bjornstad, from Bjornstad Law Office, introduced himself to the Board of Adjustment representing Larry and Desi Suter. The Suter's filed an appeal on June 13, 2014 concerning permit 49-14 issued by David Kohlhaase on May 15th 2014. Acorn Ridge is somewhat of a self-governing community, they have their own ordinances, in addition to Dickinson County, and processes one must go through to have a building permit approved. Acorn ridge is zoned Resort Enterprise (RE), but Kohlhaase has applied the Mobile Home Residential District (R-5) bulk regulations to this area. However, Acorn Ridge, has never approved an R-5 zoning change, and Kohlhaase does not have the legal right to apply R-5 zoning regulations to Acorn Ridg, RE and R-5 are completely different zoning articles. Bjornstad then illustrated to the board that there is less than 2 feet from the lot line, and less than 9' feet (from the Wiegert's deck to the Suter's mobile home) between the two mobile homes.

Jackson asked if it is the same deck that is already there.

Bjornstad said they would add on to the current deck and the screened in porch would run the length of the mobile home.

Bjornstad continued with, if Dickinson County continues to use R-5 bulk regulations the safety hazards are going to increase. Acorn ridge requires a 15' minimum between mobile homes, and what Bjornstad suggested is that you will have a nightmare that you will have every person coming to the zoning office for building permits. In addition there was never a survey done, it is just a guess work, there are no lot lines to govern personal space. I suggest that Acorn Ridge just govern their property, and it should not fall on Dickinson County or the Board of Adjustment.

Duncan mentioned that Acorn Ridge is in Dickinson County, and they have to abide by the county ordinances, which supersedes ordinances put in place by Acorn Ridge.

Bjornstad said that if Acorn Ridge would like to adopt some regulation other than RE, they could change the zoning to R-5.

Oleson said he understands the difference between RE and R-5, and there are no platted lot lines, he does not understand how they have gotten this far with it. He thinks that Acorn Ridge needs to do something when there are not any lot lines.

Bjornstad said that this is there problem, the Board of Adjustment should not be stuck governing Acorn Ridge's issues.

Duncan asked if the lots are privately owned.

Bjornstad said the people in Acorn Ridge own shares of the property, but there is not a recorded survey.

Duncan asked if the property owner only own a share of the park, would they be zoned under a R-5 district?

Bjornstad said the County is applying R-5 regulations to an RE district, and the Suter's were not given advance notice of the building permit, which was then approved by Acorn Ridge.

Jon Martin, Dickinson County Attorney's Office, asked where the lot lines, (referring to a drawing containing lots) came from.

Bjornstad said that this document is given to the residents/owners when people buy into Acorn Ridge, it is at best an educated guess to where each lot is on the land.

Martin asked if the county has the ability to regulate it, and if we are improperly zoning it.

Bjornstad clarified that the county is improperly zoning the property.

Oleson said he can see what why Bjornstad's client's disagree with this application.

Kohlhaase interjected that if Bjornstad was finished with his presentation that the County needed to present their information before further discussion should take place.

The Board of Adjustment agreed the County should present their side of the case.

Kohlhaase passed out a packet of information to the Board of Adjustment containing important history about Acorn Ridge for the Board to better understand why he is applying R-5 bulk regulations to an RE district.

Kohlhaase began by saying that Acorn Ridge was zoned Agricultural District (A-1) and then in 1982 it became RE. Bjornstad is correct Acorn Ridge is a RE district. Kohlhaase continued explaining a detailed history of Acorn Ridge. He went on to explain that every zoning district is required to apply for a building permit for any structure. Acorn Ridge also requires the President of the park to sign off on every building permit.

Kohlhaase then shared his notes on building permit 49-14, which are included on the permit. He explained that if the county were to use the RE district, the people of Acorn Ridge would have zero guidance as to where to build on their space, and the people of Acorn Ridge could build anywhere they wanted, including right up next to another structure. The RE district does not have any individual lot setbacks, it only governs the perimeters of the property. In 1998 Kohlhaase called Donnie Simmons, the park president, and they came to an agreement to use R-5 zoning, they talked about changing the zoning to R-5, but felt that RE gave more value to Acorn Ridge. The County follows the parameters for the building permit according to R-5 zoning, but the park can impose further restrictions on permits should they feel it is warranted. As Bjornstad has stated, there are no property lines, and that is why the County has the involvement of the park to try to avoid any situations such as these.

Bjornstad told the Board that he, along with Larry and Desi Suter, met with Kohlhaase, and they tried to resolve the issues, but the permit was already issued and there was nothing more Kohlhaase could have done.

Jackson asked since the R-5 is grandfathered in what leg is there for the Suter's to stand on.

Kohlhaase informed Jackson that Acorn Ridge is grandfathered under RE district. In Acorn Ridge, everyone owns a share, and they have the rights to a space in the park.

Dannatt asked the Suters what caused this issue to come before the Board of Adjustment.

Desi Suter stated that she had a few concerns about the project after they received a phone call from Al Wiegert wanting to construct a screened in porch, and Larry Suter originally said that he did not see a problem, but Desi wanted more information. She felt that adding a screened in porch was going to limit both families access to the rear of their mobile homes.

Oleson then asked what is different from what the Suter's did with their addition, then what the Wiegert's are doing with their screened in porch.

Desi Suter said that the Wiegert's will only be 2 feet from the lot line, and they do not agree with the R-5 zoning ordinance being applied to Acorn Ridge. When the Suter's did the construction on their property, they stayed 7 ½ feet away from the Wiegert's lot line. Desi Suter said she tried to understand what was going on with the screened in porch, but no one from Acorn Ridge contacted them.

Duncan asked how much space is on the other side of the trailer to get to the rear of the property.

Desi said there is 7 ½ feet.

Oleson asked Martin for legal guidance on what to do in this situation.

Martin said he did not know if there is a legal answer, the suite can always go to the district court, and there a legal answer would be reached.

Oleson said that he agrees with all sides of the appeal.

Kohlhaase reminded the Board the purpose of this appeal was to determine if the intent of the ordinance was met.

Bjornstad said that just because one has good intentions, it may not meet the intent of the law.

Oleson asked if anyone in attendance would like to speak to the Board.

Al Wiegert explained that the deck was there when they bought the place, he just wanted to go straight back with it, and he would not be projecting any further than he already was into the side yard. The proposed screened porch and deck are 5 inches smaller than the current deck on the mobile home.

Donnie Simmons told the Board that she was one of the original shareholders, and that she lived in Acorn Ridge for 20 years. She was either on the board, the president, or the park manager. She gave a history of Acorn Ridge and explained that it is a resident owned park, and each lot would own 1 share of Acorn Ridge.

Larry Timms stated that he is on the building committee in Acorn Ridge, they work with David Kohlhaase, and Dave Hinkelday the president of the building committee, to make decisions that fits the park as well as the zoning ordinance. The Wiegert's were asked to make a 5 inch change to the proposed deck, to which they complied. The building permit was then put on the agenda for the Board of Acorn Ridge to review. They meet the seconded Saturday of the month, and the Wiegert's building application was approved by the Board. Timms said the Board in Acorn Ridge does not take building permits lightly, they give each application serious consideration.

Dave Hinkelday stated that the first thing he did was to meet with the Larry and Desi Suter, and together they found what they felt was the property line, at which point Hinkelday measured to make sure the distance was greater than 15 feet. He did this to insure that the screened in porch was compliant with the zoning ordinance.

Carol Anderson who is the treasurer of the board in Acorn Ridge said that the drawing of the park that included lot lines, is for informational purposes only, and a person wanting to build a structure must contact the county for the building permit. The residents of Acorn Ridge formed a building committee because some people would just build something, and Acorn Ridge wanted to prevent structures from just popping up. Anderson then addressed the claim that the Suter's had no knowledge of the screened in porch, she said agendas and minutes go to each resident every month, and there was no representation from the Suter's in April, May or June.

Larry Suter stated he did not receive the minutes from the last 2 meetings, and he feels they are being black balled in the community. The Suter's did stake out the property, but someone ripped it down, but he did replace it.

Richard Morris, Desi Suter's father said, they did the work on the addition to Larry and Desi's home, and it was originally a 14' building, and they were made to cut it down to 7 1/2 feet, the Suter's feel pretty sure the know where the lot lines are at on the property.

Sherry VantHul said that when she first moved to Acorn Ridge there were no lot lines, and the board is diligent in making sure everyone gets a building permit. Everyone is talking about rezoning, but in general everyone gets along, and she did not feel it was necessary to go through the rezoning process.

Correspondence was read by Oleson.

Duncan made a motion to vote on the appeal.

Dannatt was not sure if they should vote, she was concerned that the results of their vote could cause a law suit. She then asked the Suter's if they wanted the board to vote on the application. The Suter's said they would like the board to vote on the appeal.

Jackson seconded the motion to vote

Oleson asked if the board would like to discuss any part of the appeal. The Board declined.

The vote is recorded as 0 in favor and 4 in the denial. The appeal is not granted to the Suter's, and they have 30 days to appeal the Board of Adjustment decision to district court.

Third on the agenda were the minutes from June 23, 2014. Dannatt moved to approve the minutes as written. Duncan seconded. All aye.

Forth on the agenda was communications.

- 1st item for communications was from the Planning and Zoning Committee, Kohlhaase said that the P&Z committee does not feel it is necessary to designate an ordinance for storm shelters and tower markings. The P & Z Committee feels there are agencies in place to regulate these items. They also feel that if they did create an

ordinance, it would open up Dickinson County to litigation. However, the Board of Adjustment can place any stipulations on any application, the board feels necessary.

- 2nd item for communications was the Hawn variance, Kohlhaase said that the Hawn variance has expired and chances are the permit would be pulled.

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

Sixth on the agenda was old or unknown business.

- 1st item of old or unknown business, Oleson stated that within the Zoning variance applications there needs to be a stipulation that includes existing and proposed structures on the site plan. It would be preferable if two site plans could be included, one with the existing and one with the proposed, so the site plans do not become too confusing.

Kohlhaase said that is something the zoning office can start requiring for variance applications.

- 2nd item of old or unknown business, Kohlhaase stated that Board of Adjustment authorized a variance for Delores Jahn at the May 27th 2014 meeting. The variance was for an 11' foot rear yard when 25' feet was needed, a variance of 11' feet. Kohlhaase consulted with Lonnie Saunders the Assistant County Attorney on the legalities of changing contractors as well as the approach to the garage. Saunders felt that since the foot print did not change, there would not be any legal issues.

Shane Neavin then presented what the proposed changes were to the Board of Adjustment. The special recommendations that are attached to the variance approval are still in effect.

Oleson asked Kohlhaase to follow up on the necessary documentation.

Kohlhaase told Neavin that all he needed was statement from him, and a site plan showing the changes.

Seventh on the agenda was other. There was none.

Eighth on the agenda was Adjournment. Duncan moved to adjourn. Jackson seconded. All aye. The meeting adjourned at 9:55 p.m.