

Dickinson County Board of Adjustment
August 24, 2015
7:00 P.M.

The Dickinson County Board of Adjustment met Monday August 24, 2015 at 7:00 P.M. in the Community room of the Dickinson County Courthouse.

Members present were Don Oleson, Jeff Ashland, Delmer Lee and Neil Guess. Absent was Mary Dannatt.

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

First on the agenda was roll call. Oleson welcomed Neil Guess, the newly appointed member of the Board of Adjustment. Robert Duncan resigned.

Second on the agenda was new business

1st item of new business was Jay Muller, Variance, Lot 14, Block 1, 1st addition to Jones Pasture, Dickinson County, Iowa. The variance was read. All members viewed the site.

Jay Muller introduced himself and began by explaining to the board how he and his wife became property owners in Dickinson County. They have worked on their house plans for the last couple years and what they brought to the Board is the best plan they could come up with. They are asking to have a 14' foot rear yard and a 3' foot north side yard. The proposed new home will have an attached three car garage to provide storage for vehicles and equipment to maintain their home. It will also help protect them from having to battle snow and ice in the winter. This new garage will be further away from the road than the current detached garage, and it will allow them to the ability to stay out of the elements when they come and go from their home. They are asking for a 3' foot north side yard to accommodate the proposed covered walkway/approach to the "front" door on the south side of the home that faces east. They are going to grade the lot so it is level with the neighbors to the south as well as tile the area to collect runoff and direct it to the lake. They do not want to move the home forward on the lot because of the mature trees, and they do not want to encroach on the neighbor's views to the lake.

Oleson asked if the covered walkway on the south side of the home is going to be roofed.

Ashland clarified for his own understanding that the Muller's are shifting the house to the north to accommodate for the covered walk way on the south side.

Muller said that is correct, and he understood that he could have 16" or 18" inch overhang to stay within regulations.

Kohlhaase said that that the ordinance states "less than 2 feet."

Oleson said that the hardship Muller is citing are the trees, and the snow and the ice. He said that he doesn't think the Board has ever heard of snow and ice being a hardship, but unfortunately trees are not looked at as a hardship.

Kohlhaase said that Muller brought up to him that an additional hardship is not wanting to encroach on his neighbor's views to the lake.

Muller said that he would not go through with this project if he has to block the view of the lake from his neighbors.

Oleson asked Muller to walk the Board through the existing and proposed site plans.

Muller said from where the current house sits, they will construct the new home 3' feet further back and shift the house to the north from where the current house sits.

Ashland clarified that the new house would be 3' feet east of the new one.

Muller said that was correct.

Guess stated the second site plan shows the corners of the two adjacent homes.

Ashland asked why Muller would move the house back the additional 3' feet when the existing home is already in alignment with the neighbors.

Muller said that it would be more aligned with the neighbor to the south, and it saves the mature trees on the front of the lot.

Ashland asked if the covered porch on the south side will have a roof and windows.

Muller said there will not be any windows. It is a covered concrete walkway to access the front door of the home on the south side.

Ashland asked Kohlhaase if Muller eliminated the roof over the sidewalk, would he still need a variance.

Kohlhaase said that if Muller downsized it to less than 2 feet, or removed it completely, he would not need the variance.

Oleson said that anything that has a roof over it is considered to be a part of the house and can be closed in at a later date, unless the Board were to put a stipulation on the application.

Kohlhaase said that the reasoning for the covered porch was to protect people from the elements while accessing the front door of the house.

Oleson asked that since the proposal has an attached garage, the front door will not be the primary access for Muller and his wife.

Muller said that the covered area ties into the front door approach to the home.

Guess said that for clarification purposes, the structure in question is not a covered porch, it is just an overhang on the walkway, but the overhang is allowed to encroach into side yards.

Kohlhaase said that an overhang can encroach into the required side yard less than 2' feet. Muller's proposed overhang exceeds that regulation.

Muller said that he would be okay if the Board wanted to add a stipulation that the front door approach would not be enclosed.

Guess asked if it would be fair to assume that Muller wanted to move the house to the north to accommodate for the south side and the reason why he was doing this was because the house to the north has more room than the house to the south.

Muller said that is correct.

Oleson said that the house to the north is a cottage and it is not a year round home.

Muller said that it is a year round home and the people who live there are in their 80's.

Oleson said that it is generally a smaller home.

Muller said that it is comparable to what their new home will be.

Lee mentioned that if the neighbor to the north wanted to build to the south, then the side yard between the homes just became even smaller.

Muller stated that he does not think that anyone would want to cut into the hill on the north side of his home.

Oleson mentioned that if either one of Muller's neighbors ever decided to rebuild, they could build out in front of you.

Muller understood.

Oleson said that if they were held to the letter to the law, they would probably have to build out in front of you.

Guess said that the house to the north probably would not have to build in front of Muller because of the lot being 180' feet deep.

Guess asked if there was a minimum separation between buildings.

Kohlhaase said that it is a 6' feet separation is between walls, and that does not include the overhang.

Muller said that in an effort to control drainage, they will tile the outside and dig a 6" inch tile to the lake and then they will grade the lot to the same elevation as the neighbor to the south in effort to collect most of the runoff from their lot.

Discussion on overhangs and roofline.

Lee said that if the overhang is really important to Muller, then he could eliminate two feet from the house.

Guess said that he is not hung up about the overhang.

Muller asked if they could split the difference and change the house by 1 foot, and then have a 4' foot north side yard. Muller's issue is having the front door approach covered, the door will face to the east and not to the south.

Oleson said that Muller has options, he could compact the house by 2 feet or eliminate part of the covered walkway that is beyond regulations, and then one of the variances would be eliminated.

Muller asked how the Board felt about the rear yard variance.

Oleson said that he has a problem with the rear yard variance because the house would fit on the lot without any variance, and he has not seen anything that qualifies to him as a hardship, this is kind of a convenience.

Guess stated that the required yard is 25' feet and Muller is asking for a rear yard of 14' feet.

Kohlhaase said mentioned that where the house currently stands, Muller is not in a flood plain, but if he were to move the house toward the lake, he would be required to address those concerns, however the idea is to stay out of the flood plain.

Oleson asked about the topography of the hill, and if the flood plain was really a concern.

Kohlhaase said that we do not draw the flood plain maps, those are done by FEMA, and until FEMA decides the structure is or is not in a flood plain, the County will follow protocol.

Lee asked about how structures in flood plains are handled in Dickinson County.

Kohlhaase said that if one were to build in a flood plain, they would need to obtain either a Flood Plain certificate or a Letter of Map Amendment (LOMA), both require a licensed surveyor to be completed.

Muller brought a couple letters from his neighbors.

Oleson read the correspondence.

Guess asked about other garages along the road.

Oleson said that the Board looks at everything on its own merit, so what has been done in the past really does not have any standing on the current application.

Saunders said that many homes along that road were built prior to zoning.

Guess said that from the proposed rear of the garage to the edge of the road is about 30' and is quite a bit further than many other homes along the lake.

Oleson stated that part of that 30' feet is the right of way.

Guess agreed then he asked Muller where the water line was located.

Muller indicated that it was the blue line on the site plan, all of the utilities are on his side of the road.

Oleson asked Muller if the side yard setback could be eliminated.

Muller clarified by asking if he would be allowed to downsize the house to eliminate the side yard variance.

The board agreed that Muller could downsize the house and add the overhang, partially eliminate the overhang and bring it into compliance or completely eliminate the overhang.

Muller said he could reconfigure the site plan to eliminate the side yard variance.

Oleson asked for a motion to vote.

Guess moved to close the public hearing.

Saunders said that it is not a typical procedure for the Board of Adjustment.

Guess said that it is in your rules that this is a public hearing.

Saunders agreed and indicated that all of the meetings are public, and yes they can motion to close the public hearing, it just means that no more comments are allowed from the public.

Oleson called for a vote.

Ashland said he would make a motion to vote on the amended application to contain only the 14' rear yard variance, and that the 3' feet side yard variance will be eliminated. Guess seconded the motion.

Vote was recorded as 3-1. Guess, Ashland, Lee approve, Oleson deny. Application was approved.

Third on the agenda was old business.

Oleson said that Saunders told him that that the Mohling case was appealed to the Iowa Supreme Court.

Saunders said that it was appealed, the Supreme Court will review the material presented at the trial back in February, the Board will not have to testify again.

Fourth on the agenda was approval of the minutes. Lee motioned to approve the minutes as written. Ashland seconded the motion. All were in favor.

Fifth on the agenda was communications. There was none.

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

Seventh on the agenda was unknown business.

Lee stated that he did not understand why the Muller application came in front the Board.

Kohlhaase said that everyone has the legal right to make application for a variance, and the zoning office tries make sure people know that it should be a last resort. Kohlhaase knew that Muller was working on his application for the last 2.5 to 3 years. Also, there is not a set definition of a hardship, it is up to each member of the Board to determine their own definition and the Board just needs to take each application on its own merit.

Discussion on setbacks and alignment.

Eighth on the agenda was adjournment. Ashland moved to adjourn. Guess seconded. All were in favor.

(For more information see BOA 08 24 15)