

Dickinson County Board of Adjustment  
September 27, 2021  
7:00 P.M.

The Dickinson County Board of Adjustment met Monday September 27, 2021 at 7:00 P.M. in the community room of the Dickinson County Courthouse and via zoom.

Members present were Jeff Ashland, Alex Oponski, Kirby Berhow, Jen Johnson and Delmer Lee.

Also in attendance was Amy Zenor- Dickinson County Attorney, David Kohlhaase- Dickinson County Zoning Administrator and Megan Kardell-Dickinson County Zoning Assistant

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. First item of New Business was Ivan Simpson, Conditional Use, Recreational Storage, SW1/4, Section 2, Lakeville Township, Dickinson County, Iowa. The request was read.

Ivan Simpson introduced himself to the board. When they purchased the 40 acre tract, the building was originally part of their agricultural operation. They decided to run electricity to the building and received an estimate from Alliant Energy for the electricity and it was going to cost \$19,000.00. So they decided to build a new building on the north end of the farm and not spend the additional money on this building, but now since they have some additional space in that building, they figured they would rent it out.

Ashland asked if they are going to use the building for recreational storage.

Simpson said yes.

Ashland asked if all of the rentals will be in the building and locked.

Simpson said that is correct.

Oponski said he noticed there were a couple trailers and a hydraulic in there currently.

Simpson said he has a couple boat trailers and a corn head part in there.

Oponski said but what is inside going forward will be rental, you'll be renting space.

Simpson said that is correct.

No correspondence

Ashland opened the meeting to the public. There was none.

Ashland closed the meeting

Johnson motioned to vote. Lee seconded the motion.

Vote recorded as 5-0. Lee, Ashland, Oponski, Berhow, Johnson, approve.

Second item of New Business is Kevin Fluit, Etal, Conditional Use, Expansion of an existing campground, The North 660 feet of the East 264 feet of Lot D, Auditor's Plat of Government Lots 7 & 8, of Section 29, Township 99 North, Range 36 West of the 5<sup>th</sup> P.M., Dickinson County, Iowa AND the North 660 feet of the Southeast Quarter of the Northeast Quarter of Section 29, Township 99 North, Range 36 West of the 5<sup>th</sup> P.M., Dickinson County, Iowa

Kevin Fluit introduced himself to the board. On August 26, 2019, Cedar Ridge Campground was granted a conditional use permit for 165 sites, 67 sites were put in the spring of 2020, as well as a bathhouse with the 1800 square feet in the basement for the tornado shelter. That would be able accommodate 360 people based on FEMA recommendations of 5 square feet per person. 58 more sites were put in spring of 2021. They have 125 sites at this point. That would leave 40 sites to put in this fall and next spring for a total of 165 sites. As they laid out the last 40 sites, they found they had more room than originally thought. They looked at the original site plan that

had some camp sites in the area where we now have the flag pole, and they realized it was a very tight area and the camp sites were not going to work. They located the second bath house near the well area, which allows them to keep the new site off the road, it blends in to what they are doing. They are not making anything tighter than what it was in the original plan. There was nothing really that they changed to achieve this, it is just how it turned out in the end. On the map it shows where the additional 10 sites are located. The second bath house will be 25 x 35, which is 875 square feet. The Board of Adjustment at their original meeting asked that we have 3 people per campsite in the event of a tornado for the base line. If you take 3 x 175 which equals 525. We can take 360 people in the first bath house, 175 in the second bath house, which gets them to 535, and is 10 over the requirement. They did have one time this season where there was bad weather coming in, they did go around with a bullhorn and knocking on doors. They had about 20 people in the shelter that day. It didn't get near as bad as they thought it was going to be, but they stayed on top of it. They are on a private public well that is regulated by the DNR, it is tested once a month. The well was tested and originally engineered to have 30 gallons per minute for 165 sites. When they drilled the well he asked them to test it with the largest pump which is a 50 gallon per minute, and it only dropped 5 feet over 6 hours. Worst case scenario, he does not feel adding the additional 10 sites would be a breaking point, but they do have the option to put in the bigger pump than what they have right now.

Oponski asked what is the projected completion for the shelter.

Fluit said the final competition date for the sites is December of 2022.

Oponski asked if that included the extra shelter.

Fluit said correct, they needed the extra shelter for the 40 sites that was included in the first approval.

Johnson asked if all of the sites were occupied last season.

Fluit said yes and they have a waiting list.

Berhow said his questions were regarding shelters, but they answered that.

Ashland said that was his concern as well, and you've addressed that.

Fluit said they knew shelter was a concern, it was a concern at the first meeting. It is a concern of theirs as well.

Steve Wells, Co-Owner of Cedar Ridge Campground said the new building will be a fully enclosed concrete building that is above ground.

Fluit said they are not cutting any corners and will be as good as they can make it.

Ashland asked if they put the condition on that the use in effect as long as it is a campground.

Kohlhaase said that is up to you. That is normally what you do, if the campground ceases its use for a year or more, then it would lose the conditional use.

Correspondence was read. Letter from the Sanitary District and Iowa Lakes Electric Cooperative.

Ashland opened the meeting to the public. There was none.

Ashland closed the meeting to the public.

Berhow motioned to vote with the condition that the use of the campground is in effect unless the use were to cease for a period of a year or more. Lee seconded the motion.

Vote recorded as 5-0. Lee, Ashland, Berhow, Oponski, Johnson.

Third item of New Business was TBBRX, LLC (deed holder) & Blue Water Harbour, LLC (contract purchaser), Variance, Lots 24, 25, and 32, Block A, Triboji Beach, Dickinson County, Iowa. The request was read.

Brian & Dan Schmidt, brothers who own Blue Water Harbour LLC. To give the board some background, they have been visiting Okoboji since they were kids and have called Okoboji their part-time residence. They are familiar with Okoboji and the area, the culture, and are huge

proponents of the Iowa Great Lakes area. Currently they own an off lake property in Maywood. They've dreamed for years to have an on lake property, so when they saw the proposed lot was for sale, they were thrilled at the opportunity to purchase it. They are very excited to be a part of Triboji Beach. As one can see the property is just south of the Lazy Lagoon, it is a beautiful 95' lot along the lakeshore and abuts the DNR conservation land. The lot does become narrower towards the back of the lot near the road due to the curvature of the lagoon. Based on the site plan they submitted, they are seeking a front yard variance. They are requesting to have a 7' foot setback when 25' feet is required for the purpose of building a single family home. As part of their application and how the unique characteristics of the property cause hardships, and makes reasonable use of the land not possible without the variance. First all lots in Triboji are unique, as most people here know, they were originally platted as 25' foot lots and there are many homes situated on just the 25' foot lot. The current setbacks do not really consider the neighborhood. What was once a buildable lot in the past is no longer buildable with today's setbacks. This particular lot abuts the DNR land along the lakeshore, this causes another unique situation where the front yard and the back yard become reversed. Additionally since this parcel is set south of the Lazy Lagoon, it causes the parcel to be irregularly shaped. The parcel has 95' feet of lakeshore but when a 25' foot front yard setback is enforced, one loses a significant part of the buildable lot and are pushed back towards the road. Enforcing a 25' foot setback in the front and 8' feet on the side yards makes the lot virtually unbuildable. The setback is also inconsistent with the rest of the neighborhood, all of the adjacent lot to the south along the lakeshore have setbacks of 10 feet or less, some are even at a zero foot setback. The most immediate neighbor to the south has a setback of 6' feet. In addition the front yard setback making the site unbuildable, the 25' foot setback would nearly be at the back of the adjacent house to the south. This look would not be consistent with the neighborhood. When they developed the plan, they took a large number of considerations into account. First they wanting to request the very minimum variance on the lot, what they are asking for is only the front yard setback, which most of the other houses along there have, they have did not request any variances that would encroach on the neighbors. They fall within all of the 8' foot side yard setbacks. Additionally, the neighbor to the south has a 6' foot front yard setback, they did not want to encroach on that, so they requested to have a 7' foot setback. The patio on the southeast side of the home was designed to "view through" to minimize any viewing impacts to the neighbors to the south. They believe these items show the need for the variance but how the variance is consistent with the neighborhood. It has come to their attention that some neighbors are concerned with drainage on the lot. While drainage is not something that is typically discussed in the variance ordinances, he wanted to bring up the conversation and to help alleviate any concern. First they hired Beck Engineering to create a site plan so they do not adversely affect any of the neighbors regarding drainage. Beck Engineering designed the site so that any additional storm water as a result of the house would be appropriately handled. Current zoning regulations allows someone to have an impervious surface coverage of 75 % of the area on the lot. They are well below that and are coming in at just below 41%, they have created 1300 square feet of soil quality restoration area. This will remove 8" inches of impervious type clays that do not allow the water to soak in and replace it with organic and absorbent soil. This will mitigate 95% of all rainfall pursuant to all county and state guidelines for the remaining 5% of rainfall, the larger events is directed toward current storm facilities. Beck Engineering designed a berm along the northern edge of the property to stop any rain flow from effecting any neighbors to the north. When one reviews the site plan, the berm will keep all rain water on the current property. He wants to make it very clear that no storm water is being directed to neighboring properties, all storm water gets directed to the green soil quality restoration areas or is slowed and held on property. The proposed structure does not create any adverse effects for storm runoff. Any historic drainage issues that relate to this property are largely a result of the property sitting vacant and no one taking care of it. By building the proposed structure and putting in the mitigation in place, there will be a much better situation in place that what is there today. The end result is good for the neighbors and ultimately good for the lake. In summary, their families are really looking forward to becoming members of Triboji, they have tried to take in as many view points from the neighbors as possible.

Oponski asked about the second level plan and if it is going to be the same as the lower level.

Dan Schmidt said it would be basically the same as the lower level, there will be one less bedroom.

Oponski said so it will be a separate living area.

Schmidt said no, it will be one living area with 5 bedrooms.

Oponski asked if there will be a kitchen facility on the second level.

Schmidt said there will not be a kitchen, but more like a wet bar area.

Oponski asked about the 41% impervious surface and if the calculations included the driveway.

Schmidt said yes. On page 2 of the site plan is where the calculations are for the imperious surface.

Oponski asked if the driveway is concrete.

Schmidt said it was, but they would be open to looking at something permeable if that is what the board would like to see. The imperious surface area would probably drop to around 20 %.

Ashland said the house is 40 x 42, did you look at any other layouts, possibly narrower and further west.

Schmidt said yes they looked other layouts, but felt this one was most consistent with the neighborhood as well as being in line with them along the frontage. This layout also keeps the house away from the people along the north as much as possible.

Correspondence was read.

Ashland opened the meeting to the public.

Dan Hicks, 20823 Lagoon St. S his cabin lays north of this property. The people who bought the property before this, brought fill in on this lot, this was a drainage lot, and was not meant to be built on. Ever since they did that, they pushed water to the north. Passed out pictures, pictures are in the file.

Ashland asked when the pictures were taken.

Hicks said not this year due to the drought, he understands if they would get a rain, before the fill was placed on the lot most of the water would stay on that property. The people brought fill onto the property to try and sell it. Now to get a variance, they are saying they are going to put in buffer zoned so they do not push water on to us. The only thing he would like to say is why didn't the previous owners do this, so these guys don't have to do it.

Ashland said they are challenged to look at the property how it is today and their drainage plan.

Hicks said if those drainage plans don't work, how are they supposed to say these plans are not right. When you put a building on a land that is going to take away the area where the rain/water would settle. You're taking away that land to settle that water. Where is that water going to go, and is it going to be pushed somewhere else. The idea to basically get a variance, is not just the idea for him, the idea is he would really like to have his land in a better place, it's not, but it was before. Now he doesn't know if it is going to get worse. He would like to have some assurance that basically, that they on the north side of that property are not going to be affected by these people.

Berhow asked if the water is the main concern.

Hicks said yes. The floor of his shed is rotted out due to the amount of water and being flooded.

Berry Enockson 15414 Percival Dr., he is the first lot to the south of this project. He is a witness to seeing Mr. Hick's back yard being flooded. He agrees that the previous owners did bring in a lot of fill. There is a nice crown and it should be a park, the water goes to the north and the south. The water sits behind his garage, and has many cracks due to the freezing. There is a soil quality restoration area right behind his garage, so they plan to have even more water sit behind his garage. Drainage is his main concern. The water runs down the street towards the Lazy Lagoon and into the ditch that drains into the lagoon. If they put that drive way over the ditch, it would create a dam, unless there culvert placed in there and that is not on the plans. He was reading the

Spirit Lake zoning ordinance, and he believes he read, one must have 2 parking places for every bed room.

Kohlhaase said for clarification the zoning district requires a minimum of two off street parking spaces.

Enockson said the final thing he would like to bring up on the plan it states FFE 1402 and 1407. How big of house is this going to be?

Kohlhaase said those are elevations of the flood plain, it has nothing to do with the house, it is the land. Also that is a County road and to extend the driveway beyond the property line, they would get what is called a working in the right of way permit/driveway permit through the Engineer's office. That permit will determine what that driveway will need, usually it is not to create a dam, but to allow the water to go where it needs to go.

Ashland said for clarification, the garage is 1398, Enockson's house is 1407 and the proposed home is 1402.

Lee said the garage is 9 feet lower than Enockson's current home.

Carol Rockman 15462 Percival Dr. the variances in Triboji that have been requested and approved in the past due to the lots being grandfathered in before a zoning ordinance took effect. The approved permits were for buildings that were already in place and upgrades were made to the structures to maintain an existing footprint. This variance has no foot print established and are going against the variance requirements. The setback requirements are in place for new construction, the variance is to be based upon a necessity and not for a want or for improvement of the lakeshore setting. They've maintained their footprint to maintain their home, it cost them thousands of dollars to move the home off the foundation, replace the crawlspace and move it back. It is their position that they maintain the requirements for setbacks as directed in the ordinance, the desire for lakeshore view is not your directive to maintain. The size of this lot can be built upon in the required setbacks set forth by the committee. There have been too many requests in the past that were denied and these were for much smaller variances. To approve this one would be a total disregard to the committee all together. They are opposed to the approval of this variance and they should build within the setbacks required.

Bob Marksberry, 15479 Washington Blvd. stated that Percival Drive is a very busy road, all the concrete is going to drain somewhere, and he does not see anything beneficial about this property. He does not understand how this is a contract purchase.

Kohlhaase said what a contract purchase means is that the applicants are purchasing the property with the contingency that they can do with what they want with the property. Once they are able to do that, then they can perform on the property and then become the deed holder.

Marskberry said his fear this is going to be a rental, there is a lot of drainage problems and water problems.

Chris Staber 15413 Percival Dr. from what she understand with a variance, it is supposed to be a need verses a want. This is a want, they are going beyond their boundaries.

Frank Fulton 15438 Percival Dr. he is about 7 houses down from the subject lot. This is their forever home, this was a little cabin and when they did their addition they had to have a water retention plan was like \$1300.00 and \$10,000.00 dollars to implement. If they can get an 18' foot variance, he would like to request a 21' foot variance for an enclosed deck.

Ashland said each application is stand alone and you are welcome to bring yours to us.

Jason Koebe 20819 S. Lagoon St. they also came just a month ago, he's come here since a child, similar to the applicants. There is a depression in that back corner, his hope that if this is granted, and you're the new neighbor, he would like to have a way to fix that problem and he would the board to consider how to do this, and building on the lot creates more of this problem.

Randy Rockman 15462 Percival Dr. when they bought the property, they put fill in there. The deed is a bunch of letters, there is no name on it, they bought the property on the north end of Triboji beach hoping for a trade with the DNR, but that did not happen. The property looks okay

as long as it is dry, if they are going to run the water to the lagoon, it will not go that direction because the lagoon is higher.

Dianne Everhart 15446, 15448 Percival Dr. This is basically a wetland, right now it goes back onto the lake, where is that drainage going to go, will the sewer be able to take that much water. They need to protect the lake, this world is not a vacuum, they are very much against it because of the drainage.

Ashland closed the public meeting.

Kohlhaase said Triboji was platted way before zoning, most lots are substandard, but their grandfathered in, and have a legal right to be built upon. It is what's your going to build on those lots that has to conform to bulk regulations. In reference to this application, they are asking to not follow the front yard setback and are asking for a variance. The applicants in this case, this is similar to a court case and is taken on its own merit. It is specific to these facts, this property as well as all of Triboji is zoned R-3 Multi-Family residential. They are asking for a single family residence which is an allowed use in this area. A lot of the conversation is around drainage, if anyone owns this property, and depending on what they are going to do, a drainage plan is required. A drainage plan is required for any new house. If you have over 60% impervious surface, it requires an engineer to design that plan. In this case they are at 41 %, so they are under that requirement, but in reference to who designed this plan, it was Beck Engineering. Soil Quality Restoration is a way to prepare the soil with mulches and soils to have the water drain into the soil instead of run off. It sounds like at one point there was fill brought onto this lot, dumped and compacted. They have to design a drainage plan for the impervious surface, the house and the concrete driveway. Whether or not the variance is approved or not, but anyone who owns this lots has a legal right to build on this lot, but it is just a matter of what their requesting is approved through bulk regulations or the variance process.

Brian Schmidt said he understands the entire area has drainage problems, they saw the '93 floods and understand the concerns of the neighborhood, they spent a lot of time with Beck Engineering regarding the drainage plan. If the variance is granted, at least there is something being done to mitigate some of these issues. Right now the lot sits vacant which increases the issues some of the direct neighbors are dealing with. He said he heard a lot of concerns about the concrete, it makes since to amend the concrete driveway and have a pervious structure.

Dan Schmidt said they are here to work with everyone, and appreciate the concerns. He said the area to the northeast is designed to have SQRA, but they could look at doing some sort of detention pond to help with the big rain event.

Brian Schmidt said they are trying to bring a betterment to the area, which it sounds like there are a bunch of problems with it now. It give us and everyone a chance to win from the improvements. He wants to address some concerns. The drainage plan was done by Beck Engineering and there was a calculation of impervious surface area. He does not know the history of the property and cannot speak to that. When you take away the beneficial buildable use of the lot is typically when a variance is requested. The property is for a single family residential, they went through the unique area of the lot. When one starts pushing the building back further, then the buildable area is reduced and one would not be able to build a reasonable house as well as more adversely affecting the neighbors with drainage. The parking situation will also get worse with the reduced area. There is not a garage being built on the property.

Dan Schmidt said there was a comment in a letter regarding outside storage. They own property with a large storage unit, they will not have any outside boat trailers or anything like that sitting on the property.

Brian Schmidt said there were no private discussions with the board members, there was one call to the zoning office just curious about procedure and how the meeting would be conducted.

Ashland said the resounding thing he hears is drainage.

Brian Schmidt said that drainage exists with any lot regardless if it is a variance or not.

Ashland asked about a retaining wall and will dam up the water.

Dan Schmidt said there will be a berm along the north side of the property that will do wonders for the properties to the north.

Kohlhaase said one of the main issues tonight is drainage, and that is probably why this is one of the few remaining lots in Triboji. Remember the priority is the variance request, but what's goes along with that to make things better. For example the berm keeping the water on their lot, and then the SQRA taking the water into the soil and then the possibility to have the retention pond in the northeast area, as well as the permeable pavers for the driveway, are all things that could be discussed with the applicants.

Johnson asked if they talked to their neighbors before requesting the variance.

Dan Schmidt said he tried to get in contact with the Triboji Beach Betterment Association via their Facebook page, but were unsuccessful. They saw some comments on there and were sure to address those here tonight.

Johnson said she meant neighbors to this lot.

Brian Schmidt said no.

Kohlhaase said a zoning certificate was provided, everyone within 500' feet of this said lot and are notified via mail.

Brian Schmidt said he believes this would be good for everyone.

Oponski said he would have liked to see an upper level to get a better understanding of the layout.

Dan Schmidt is a single family residence for both of the brother's families. They have a house in Maywood, they've never rented, they always wanted to have a lake front property.

Ashland asked if this is going to be an AirB&B.

Schmidt said this will not be an AirB&B it will be just for their families. He believes there is an ordinance against this.

Kohlhaase said until recently counties and cities were able to regulate this, but the state stepped in and we can no longer regulate short term rental. The R-3 district does allow for many other types of uses, on this property if an applicant chose to go that direction.

Ashland said they are challenged as a board to figure out what is reasonable.

Kohlhaase said the ideal thing with a variance request, there are more people involved to make things better for the area. If someone brings something into compliance and it meets the ordinance, the permit would just be issued. This could be a chance to do more and better things.

Oponski asked when they entered into the contract did they know what the setbacks were.

Schmidt said they did, they were not aware of the 8' feet side yards, they believed it was 5' feet side yards.

Kohlhaase said since it is an R-3 district and does not abut the lake, it requires to have 8' feet side yards.

Schmidt said an 8' feet really narrows the lot and really tightens the building area. They thought it would be best to keep away from the side yards and get the house in line with the other houses along the lake and keep with the character of the neighborhood.

Johnson motioned to vote. Oponski seconded the motion.

Vote recorded as 2-3 deny. Lee-approve, Ashland-Deny, Oponski-Deny, Berhow-approve, Johnson-deny.

Third item on the agenda was Old or Unknown Business. There was none

Fourth item on the agenda was Approval of the minutes from May 24, 2021. Oponski motioned to approve. Lee seconded the motion. All were in favor.

Fifth item on the agenda was Communications. Kohlhaase told the Board that there is a possibility of have 5 agenda items next month, but 3 relate.

Sixth item on the agenda was Adjournment Berhow motioned to adjourn. Johnson seconded the motion. All were in favor.