

Dickinson County Board of Adjustment
January 24, 2022
7:00 P.M.

The Dickinson County Board of Adjustment met Monday January 24, 2022 at 7:00 P.M. in the community room of the Dickinson County Courthouse and via zoom.

Members present were Jeff Ashland, Kirby Berhow, Jen Johnson, Alex Oponski, and Cami Wills.

Also in attendance was Steve Goodlow- Dickinson County Assistant Attorney, David Kohlhaase-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. 1st Item of New Business. Election of Officers. Oponski nominated Ashland as Chairman, Johnson seconded the nomination. All were in favor. Johnson nominated Oponski as Vice Chairman, Berhow seconded the nomination. All were in favor. Johnson nominated Berhow as Secretary, Oponski seconded the nomination. All were in favor. Oponski nominated Kardell to perform the keeping of the minutes, Johnson seconded the nomination. All were in favor. The Officers are Jeff Ashland, Chairman, Alex Oponski, Vice Chairman, Kirby Berhow, Secretary.

2nd Item of New Business was TBBRX, LLC (deed holder) & Blue Water Harbour, LLC (contract purchaser), Variance, Lots 24, 25, 32, Block A, Triboji Beach, Dickinson County, Iowa. The request was read.

Bryan & Daniel Schmit introduced themselves to the board. They are seeking a variance to build a single family home. While they were disappointed with the outcome of the meeting last year, it gave them an opportunity to address some the concerns from the board and the surrounding neighborhood. They were able to have excellent conversations with many of the neighbors, including the immediate neighbors and the Triboji Beach Betterment Association. As a result of those discussions, they improved the site plans, the second floor layout of the home, and presently have the support of two of the immediate neighbors. As discussed in the application they are requesting to have 7' feet front yard setback, when 25' feet is required in the R-3 Multi-Family Residential District. As you know variances exist to permit a property owner to build on land in a zoning district that does not consider the uniqueness of the lot. More importantly, zoning cannot take away the rights to build on a previously platted lot, and variances insure this does not happen. He can think of no better property for a variance than the current one. Triboji is the most unique platted spot in Dickinson County this particular lot is the most unique in Triboji, The shape of the lot is heavily influenced by the lazy lagoon, it causes the lot to have a width of 95' feet along the lake front but only 25' feet of width long Percival Dr. This is a 75 percent reduction of width when you go from the front to the rear. The front and side yard setbacks remove most of the buildable area of the lot. Importantly, this request is designed to keep the lot buildable while conforming to the character of the neighborhood. The 7' foot setback put the home in line with the 13 other homes along the lake front, they are confident this project will be a win/win for the neighborhood. They would be able to build a home for their families, while addressing drainage issues that have existed for a number of years.

Jeff Rose, engineer with Jacobson-Westergard Associates. What sheet one is, is the existing ground and how it sits today. He has drainage arrows on there to show the direction of water flow, there are dashed lines that show a ridge where the drainage splits on the property. You can see a ridge that goes between the words lot 24 and 25, the drainage there splits and goes towards the road and to the north. On the second sheet, it is similar to what you have seen in the past. They are going to keep the berm long the north side to help keep any water that comes from this property to stay on the property and to try to infiltrate as much as they can through soil quality restoration. Then any overflow will go into the road ditch. On the south side they did get rid of the infiltration, but they added a berm to keep the water away from the neighbor's garage. The infiltration was proposed previously was 8" inches, they've increases that amount to 10" inches and can go deeper

if needed. The minimum requirement for LID is 10" inches for a property of this size and hard surface. At the very low end, there is a different pattern, there will be a low spot there where the water crosses from the southwest to the northeast. In that crossing area, they are going to have pervious pavers. Between the soil quality restoration and the pervious pavers, they're going to have about 147 percent of the County's requirement for the LID practices. The intent is to keep the drainage on the property and then if there is any overrun to get it to the road ditch.

Ashland said the water way on the north side, does that flow to Percival.

Rose said yes, if you go to the north corner of the house there is a dashed line, from the top of the berm to the bottom of the swale that is 5" inches deep and as you go further to the west toward Percival Dr. it get to be about 12" inches deep by the end of the berm.

Ashland asked if flows that way now.

Rose said right now there is the drainage divide that goes up through the middle of the property. A portion of the drainage goes toward Percival, the other portion goes towards Dan Hicks's property. Their intention is to intercept the portion towards Hicks, and take it all to the west. It's a hard lot to show a lot of detail.

Berhow said it appears that you are moving more water to the west than there was before.

Rose said yes, there are two low point areas in blue, the northwesterly one will outlet into the ditch. The one on Dan Hicks property has no outlet. It's a true low point with nowhere for the water to go. They are basically taking the water that went there and directing towards the road ditch. The whole intent of the drainage plan is to not affect the neighbors.

Oponski asked with all drainage items taken into consideration will that handle all the water from the house, drives, everything.

Rose said yes.

Oponski said it will not create any flooding.

Rose said if you take a look at the LID calculations that were submitted, he took a look at the whole property and did standard calculations for low impact development across the whole property. Infiltration, soil quality restoration, will take care of the first 1.25 that is mandated by the Iowa Stormwater Management manual. The berm and swale will take any excess that does not infiltrate and send it off towards the west.

Wills asked if this property is part of a homeowner's association.

Dan Schmit said there is a Triboji Beach Betterment Association, which is a neighborhood association. He does not know if it has any formal legal rights like a HOA.

Wills said you won't be paying dues or anything.

Dan Schmit said not that he is aware of, there are a lot of members from the neighborhood in that group, the head of that group speaks for a lot of that neighborhood. They've done a lot of outreach with them to make sure they are working with them.

Correspondence was read.

Ashland opened the meeting to the public.

Chris Staver 15413 Percival Dr., from what she is getting the water runoff is now going to be directed to our property on the other side of Percival Dr. which has always been an issue in the past. They also spent quite a bit of money to have their land surveyed and raised. What she is seeing with this plan is to push the water to the other side of the street, she believes that is going to be an issue.

Paul Zierke 15418 Lakeview Dr. Gave pictures to the board of the property. He asked if they survey was done prior to the fill being brought onto this land.

Dan Hicks said his property has the lowest point, it is the back side of his lot. For them to basically do what they're trying to do, he does not understand. The fill was actually put in by the other

people to sell it, they tried to make it look pretty. This was a drainage area, the fill is why it was sold.

Ashland said Rose had said during the presentation about how they are proposing to get the water the water from the north portion of the lot to the west. Is that correct, Rose?

Rose said yes, there will be a berm inside the property line to divert the water that goes towards Hicks's property, it will flow along the berm towards the west.

Ashland asked if this plan would help Hicks, who has the lowest area.

Rose said yes.

Hicks said to a point it will. After the fill was put in, water now runs into my back yard, but it would mostly stay on the other land.

Ashland closed the public meeting.

Ashland asked if Rose could address drainage a bit further.

Rose said at the north corner of the house, the berm on both side of the property are 3" inches higher than the proposed ground. At the north corner, they are going to dig down so the berm is 5" deep and as they flow out towards the west, where the berm is about 12" inches deep. It will drain into the road ditch by the power pole, and it will head toward the NE to the lazy lagoon. There is a high point near Kobes's lot, they are going to carve that out so it can flow through there.

Ashland asked if drainage is going to overload the flow in that direction.

Rose said he looked at the ditch, he does not have any survey information about it. It is a fairly shallow ditch at the power pole, but it does get deeper and wider towards the lagoon and eventually ends up in a 15" inch culvert.

Kohlhaase asked Rose to explain the soil quality restoration area.

Rose explained said the zoning code requires low impact development to be implemented. Here they are doing soil quality restoration, they are going to dig down 10" till all the soil so it is nice and loose, add in some compost, 2 parts compost, one part soil and what that does is it opens up the soil profile to allow the water to flow in and percolate into the soil below. All LID practices treat the first 1.25 inches of rainfall, which accounts for about 90 percent of storms in Iowa. He looked at different heights of the berm, it is like a V shape, a 25 year and 12 hour storm would only need a 2.5" inch berm, and they will have 5" inches at the lowest point. The plan b is to increase the height of the berm and or build a block wall, which the property owners are willing to do on an as needed bases.

Oponski said he heard some comments about the use of the home, he would like the applicants to address those concerns and justify the needs for a home this size. Are the two families going to be occupying the home at the same time, why 6 bedrooms. If you could just go into a little bit of detail about the concerns of "other" uses.

Dan Schmit said he wants to be clear, this is a single family home, for the use of both of their families, each with two children, and a third on the way. We will use it together one some weekends. He has no idea where the AirBnB rumor started, but there is no bases what so ever.

Schmit walked through some slides on how it fits with the rest of the neighborhood.

Johnson asked if they changed the blue print of the home since September's meeting.

Schmit said they changed the drainage of lot, and included the second floor layout.

Johnson clarified and stated the square footage of the home did not change since September.

Schmit said that is correct. They are respecting the sides and rear setbacks and are asking for the minimum front yard setback.

Ashland asked if they will use the area by the lagoon for additional parking.

Schmit said they have no reason to use the boat ramp area for parking. They have a long driveway. In the past he guesses there was an issue about people walking across the DNR property in front of the homes. They understand that is public property, and they respect that.

Additional Correspondence.

Kohlhaase said depending on how the board feels, it would be his recommendation that a condition be put on that as planned by Jacobson-Westergard for their client, that plan be implemented and then certified by Jacobson-Westergard within 30 days of the completion of the project. Meaning we have the plan, we want to make sure it is implemented as presented and have it be certified by the engineer firm that did the design. It just seems like a good thing and we just want to make sure done as planned.

Ashland asked the applicants if that is agreeable to them.

Schmit's said yes.

Oponski motion to vote with the condition, Berhow seconded the motion.

4-1 approve. Oponski-approve, Johnson-deny, Ashland-approve, Wills-approve, Berhow-approve.

Third item on the agenda was Old or Unknown Business.

1st Item of Old Business-Tabled from 12/28/21 meeting discussion/action levying a fine against Ivan Simpson.

Kohlhaase said Cami Wills, as discussed previously, will excuse herself from this discussion as a result of possible pending litigation with the Harbor, she also serves on the board for the Harbor Association. He wants to clarify what your possible response or role could be in this particular case. As we know this situation occurred after the fact, and we try to work with people and not against them. One way Mr. Simpson could resolve this is to make application for a conditional use for those boats that are in the building across from the Harbor on the west side of 86, and last month that application was denied. You talked about what could be the consequences, and under your rules, the Board of Adjustment rule number 19 says "the Board of Adjustment may recommend a complaint be filed and recommend a fine up to \$500.00 dollars, surcharge and cost for each day of violation of the zoning ordinance exists as provided by the zoning ordinance and state law, such action may be taken upon a vote in the affirmative of the simple majority of the members present." So your options are this, you can have discussion on it, it can dissolve and go away, or you can make a recommendation one way or another to basically ask the County to enforce the zoning ordinance and file charges against Mr. Simpson. Questions he thought of, are the boats still in the building, what are the plans with the boats, thoughts and ideas, you cannot "fine" the applicant, you can make a recommendation or not that the zoning ordinance be enforced. When someone violates the zoning ordinance and doesn't correct it, ignores us, then we file charges and it goes to the courtroom.

Matt Early, representing Ivan Simpson addressed the Board. While the board is contemplating the situation, he thought it is imperative to discuss some of the factors relating to mitigation against levying a fine or as to the amount of the fine. The history of the boat storage on Simpson's property is he does have the one building that has a conditional use permit for recreational storage, he bought that a few years ago from a party that used that building for boat storage out of compliance for a number of years. When he figured out he is not supposed to do that, he came to the board and asked for a conditional use permit to bring it into compliance, which the board granted. That building was never quite full, he did advertise for boat storage and received an overwhelming response. This led to the circumstances he found himself in, given the history of the use of the building that is in compliance and given the fact that there was imperfect communication between him and his son, who were both taking reservations for space in the compliant building, they found themselves with a surplus of boats that would not fit into his compliant building. For expedience, he had his new agricultural building and took the excess boats and put them in there. Just to understand, that new building was built for agricultural use, it stores their farm equipment, cattle stalls with the materials to build them. Given the circumstances in which he found himself, he put 12 to 15 boats into that building, his intent was expediency not profit motive, he was trying to manage a problem and did not intent to be non-compliant. That new building if driven by profit,

would hold about 65 boats and he had request from multiple outlets for additional boats. He went to the effort, time, and expense to come to the board for a permit to be in compliance. Overall, the overflow of these boats was unintentional, he made attempts to make himself compliant. He is not charging anyone for the storage of the boats in the new building and is asking for some time for the season to come around to get those boats out of there. He is coming back to again ask for a conditional use application with a drainage plan and so forth so he can be compliant with the board's directives.

Kohlhaase said when we file charges against folks, there are discussions and negotiations that take place. Do we like what occurred and happened, no, should have Mr. Simpson have known better or not, that's up to Mr. Simpson to decide in his mind, but bottom line is if we were in the halls in the courtroom, the judge is going to ask how can we work this out. One thing Mr. Goodlow and myself have discussed is if Mr. Simpson would provide a signed letter stating there are x amount of boats in that building, he is not charging those people, but he made a mistake, and those boats will be removed by a certain date. He believes this would be an option to resolve the situation.

Goodlow asked Early what date he thought would be appropriate, would May 1st be feasible?

Early said he is not in the boat storage business.

Adam Simpson said May 15 would allow them to get the boats removed from the building without having to put much pressure on the boat owners.

Early said he thinks forcing the boats out of the building is not penalizing Mr. Simpson, its penalizing the boat owners who believe they have proper storage.

Oponski said he would like to stipulate that Mr. Simpson cannot apply for a conditional use permit until all of those boats have been removed. The problem will take care of itself then, you shouldn't need the conditional use permit until the end of the season which should give him plenty of time to apply, make sure it's all cleared out, do the things that are necessary. He's fine with obtaining the letter from Mr. Simpson if it were to include that he understands he cannot apply for a conditional use until after May 15, 2022.

Early said he does not see that as a problem.

Kohlhaase said if the board agrees Mr. Early/Mr. Simpson will submit a signed letter to the County Attorney within a two week period from this date.

Adam Simpson said they are okay with waiting until the boats are removed from the building before they re-apply.

Early said to clarify the County will receive the letter within 2 weeks, it should contain getting the boats out of the building by May 15, 2022, no revenue for the storage, no reapplication for a conditional use until the boats are removed, anything else.

Kohlhaase said a count of the boats should be in the letter.

Early said he believes that could be acceptable.

No Board action, in place of that action an agreement was reached and the County will obtain a letter from Mr. Early/Mr. Simpson within 2 weeks.

Fourth item on the agenda was Approval of the minutes from December 28, 2021. Berhow motioned to approve. Johnson seconded the motion. All were in favor.

Fifth item on the agenda was Communications. There was none.

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

(For more information see recording BOA 01 24 22)