

LINN COUNTY BOARD OF ADJUSTMENT

Jean Oxley Public Service Center
935 2nd Street SW, Cedar Rapids, Iowa

MINUTES Wednesday, April 24, 2019

I. QUORUM DETERMINED:

The Linn County Board of Adjustment meeting was called to order at 6:30 p.m. by Chair, Sabrina Grace. The meeting was held in the Jean Oxley Public Service Center, 935 2nd Street SW, Cedar Rapids, Iowa.

PRESENT: Sabrina Grace, Chair 12/31/21
Ron Hoover, Vice-Chair 12/31/22
Pat Harstad 12/31/19
Dave Machacek 12/31/20
Rebecca Palmer 12/31/23

ABSENT:

STAFF: Les Beck, Director
Elena Wolford, Assistant County Attorney
Charlie Nichols, Planning & Zoning Division Manager
Mike Tertinger, Planner
Jessie Black, Recording Secretary
Cathy Brown, Permit Specialist

See attendance sheet for community sign in.

II. OLD BUSINESS

III. NEW BUSINESS

**JC19-0006 Mike Tertinger Vernon & Antoinette Kloubec Conditional Use -
Trust, Owners Floodplain
City of Cedar Rapids, Petitioner
HBK Engineering LLC, Surveyor**

Tertinger presented the staff report. The applicant is requesting a Conditional Use Floodplain Permit for excavation within the General Floodplain District. The applicant is proposing installation of a sanitary sewer extension east of C Avenue NE and north of East Robins Road on property zoned AG (Agricultural) in order to extend services for future development north of Cedar Rapids. The proposal consists of a 15" sewer main, trenched to a depth of approximately 10-15 feet, which will connect to an existing 21" sanitary sewer trunk line located west of Alburnett Road. The entire project will disturb approximately 3.3 acres, however only a 0.22 acre portion of the project is located within the designated 100-year floodplain and subject to the conditions of the floodplain permit. The intent during construction is to open-cut the trench, install sanitary sewer pipe, backfill, and restore/stabilize to original condition. A temporary construction entrance will be located off C Avenue north of Echo Hill Presbyterian Church.

The applicant must obtain all relevant permits required by state and federal entities. The applicant must obtain proof of condemnation in lieu of the current property owner signature on the application. The

proposal meets all applicable standards for approval in Article VII, § Section 107-144 of the Unified Development Code.

Staff recommends approval subject to the conditions of the staff report.

The Board had no questions for staff or the applicant.

Motion by Machacek to accept the Findings of Fact, Conclusions of Law, and Decision & Order as reflected in the staff report for the Conditional Use Floodplain case JC19-0006, and to approve case JC19-0006, Second by Hoover.

Palmer	Aye
Grace	Aye
Harstad	Aye
Machacek	Aye
Hoover	Aye

JC19-0007	Mike Tertinger	Duane Schlatter, Owner Daniel & Alison Stone, Petitioners Brain Engineering Inc., Surveyor	Conditional Use - Animal Boarding / Shelter
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Tertinger presented the staff report. This applicant is requesting a Conditional Use Permit for an animal rescue business. Hercules Haven is a 501(c)(3) non-profit whose mission is to “provide compassionate care for neglected or unwanted farm animals and to offer area residents therapeutic interaction and educational opportunities with the animals” under their care. The types of animals to be sheltered at this location include hogs, mini-pigs, horses, goats, sheep, chickens, and a few cats, & dogs. The applicants desire to host open barn days, youth groups, classrooms, adults seeking respite, summer day camps, bonfires, family renewal tours, therapeutic experiences, volunteer trainings, and fundraising events.

It appears that the proposal meets all of the standards for approval for Conditional Use Permits in Article IV, Section 107-73, § (4) of the Linn County Unified Development Code. Other development standards include requirements for a major site plan, and a requirement for the site to have access to a hard-surfaced road of sufficient capacity to accommodate traffic that the use will generate. The proposal meets the parking standards found in Article V, Section 107-93, § (e).

Staff recommends approval subject to the conditions of the staff report.

Palmer asked Alison Stone, applicant, how many fundraising events they plan to host and how large each event would be. Stone answered that each event would host no more than 100 people. She explained that they plan to host fundraising events at new property, but are not permitted to do so at current location.

Motion by Palmer to accept the Findings of Fact, Conclusions of Law, and Decision & Order as reflected in the staff report for the Conditional Use case JC19-0007, and to approve case JC19-0007, Second by Machacek.

Grace	Aye
Machacek	Aye
Hoover	Aye
Palmer	Aye

Harstad **Aye**

JSE19-0003 **Mike Tertinger** **Kristofer & Heidi Ruhland, Owners** **Special Exception front yard setbacks**
Casey Johannes Construction, Petitioner

Tertinger presented the staff report. The applicant is requesting a special exception from the 50' front yard setback requirement in an RR3 (Rural Residential 3-Acre) zoning district. The applicant is proposing to build a 4,959 square foot new single-family dwelling on the property. The proposed single-family dwelling would be located 26' from the front property line at its closet point.

A demonstration of a practical difficulty appears to have been shown in this case due to the topography of the lot and the subsequent limited building area that avoids the steep slopes on the property.

Staff recommends approval of this application as it appears that a practical difficulty has been demonstrated.

The Board had no questions for staff or the applicant.

Motion by Hoover to accept the Findings of Fact, Conclusions of Law, and Decision & Order as reflected in the staff report for the Special Exception case JSE19-0003, and to approve case JSE19-0003, Second by Machacek.

Machacek **Aye**
Hoover **Aye**
Palmer **Aye**
Harstad **Aye**
Grace **Aye**

JAP19-0001 Les Beck Darrin Nebraska, Owner Appeal of Agricultural Exemption Denial

Beck presented the staff report. The applicant is appealing the decision to deny an agricultural exemption for construction of a new single family dwelling on the subject parcel. The proposed house would be the second house on the property.

The subject parcel contains approximately 13.9 acres. The exemption application lists 7 acres of hay (all for commercial production) and honey production.

The accompanying staff report will show that:

1. The parcel is not a “farm unit” and therefore, by definition the proposed house cannot be considered a “farm house.”
2. Additionally, Iowa Code requires a farm house to be “primarily adapted” for agricultural purposes. On the basis of all available information regarding the use of the property and the limited scope of agricultural production, the proposed house cannot be considered to be primarily adapted for agricultural purposes.

For these reasons the proposed house cannot be considered a farm house.

Staff recommends the Board of Adjustment uphold the determination of the Zoning Administrator to deny the Agricultural Exemption.

Hoover wondered if Beck’s determination would change if Nebraska’s cropland was greater than 50%. Beck said it would potentially change whether or not property could be considered a “farm unit”, but not necessarily his decision about the farm house.

Machacek asked to see more photos of the property. Beck shared several photos.

Harstad wondered who would occupy the proposed second dwelling and whether or not they would be involved in agricultural business. Beck was not sure, but stated that this information is not relevant to his determination.

Darrin Nebraska (applicant), 604 Squaw Creek Road, presented a PowerPoint supporting his argument that he and his wife, Sherri, are primarily engaged in agriculture on the property. He insisted Beck’s determination was incorrect and requested that the Board reconsider. Nebraska’s PowerPoint reiterated information originally provided on his Agricultural Exemption application.

Harstad wondered if Nebraska’s forest reserve area was a government contract or planted for crop purposes. Nebraska explained that forest reserve had already been established when he acquired the property. Harstad asked if he harvested any of the trees for profit or intended to in the future. Nebraska answered no.

Carl Berstler, 616 Squaw Creek Road, spoke in support of the appellant. He recognized Nebraska for being a kind neighbor, stating that Nebraska has lent him farm equipment, hired his grandsons to help bail hay, helped him with beekeeping, and other generous favors.

Beck addressed Harstad’s question about forest reserve area; insisting that forest reserve is not relevant to this particular agricultural exemption request because it is not currently, and there is no intention of, being harvested. Harstad argued that the trees are unable to be harvested until they reach a certain level of maturation, implying that Nebraska might be waiting until then to do so.

Palmer motioned to accept the Findings of Fact, Conclusions of Law, and Decision & Order to deny the Appeal, Case JAP19-0001, and to uphold the determination of the zoning Administrator to deny the Agricultural Exemption for case JAP19-0001. The motion died for a lack of a second.

Motion by Hoover to adopt a Findings of Fact, Conclusions of Law, and Decision & Order in support of the Appeal, Case JAP19-0001, and to reverse the determination of the Zoning Administrator to deny the Agricultural Exemption for case JAP19-0001, Second by Harstad.

Grace	Aye
Palmer	Nay
Harstad	Aye
Machacek	Nay
Hoover	Aye

JV19-0001	Les Beck	Jason Smith & Diane Wellman-Smith, Owners	Variance – Exceed Allowable Square Footage for Home Occupation
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Beck presented the staff report. The applicant is requesting a variance to the allowable limits for a Home Occupation conducted out of an accessory building. This is an existing, permitted Home Occupation approved in 2010 (Case C-01-10). The applicant is currently using nearly 10,000 sq. ft. of space in four existing accessory buildings. The approved Conditional Home Occupation permit limits the operation to 1,000 sq. ft.

For a parcel of this size, the Conditional Home Occupation regulations allow up to 1,000 square feet for business usage. A Variance may be granted by the Board of Adjustment only upon a finding that, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in an unnecessary hardship and amount to a “practical confiscation” of the property. The applicant must demonstrate that the hardship is a compelling force and will not merely serve as a convenience, and that the hardship was created by the ordinance and not the applicant.

Staff recommends denial. There are no special topographic or other conditions related to the property. The property has a reasonable economic use if used in compliance with the approved Conditional Home Occupation permit issued in 2010, and therefore there is no “practical confiscation” of the property without the Variance. The Variance will serve merely as a convenience to the applicant, and any perceived hardship is a result of actions of the applicant and not from provision of the ordinance.

Hoover wondered how the 1,000 sq. ft. limit was established. Beck explained that the intent is to limit the scale and maintain residential as primary use. Hoover asked if the type of occupancy determined allowable area. Beck answered no, allowable area is determined by the size of the parcel.

John C. Wagner, the Smiths’ attorney, spoke on behalf of Jason & Diane Smith. He explained that the Smiths moved to the property in 2007 and have since built a new home, gazebo and outbuildings. He added that the couple has received dozens of compliments regarding the upkeep of the property. He insisted that only some of the existing accessory structures were used for business storage and others were used for only personal. Wagner informed the board that Jason Smith’s concrete construction business employed eight people, four of whom come to his home daily to pick up a work truck and take it to the job site. Wagner explained that no business was actually taking place on the property. He added that many surrounding property owners were supportive of Jason & Diane Smith’s concrete business.

Wagner listed all of the conditions for approval, including a five-year review and site visit, requested by Linn County Planning & Development. He added that the Smiths have agreed to all conditions, with the exception of one modification: one of the homeowners must be present at the time of site visit.

Palmer commended the Smiths for their immaculate upkeep of the property. She expressed concern for understanding how the hardship was created by the ordinance and not the homeowner. Wagner insisted there was a lot of ambiguity as to whether or not the Smiths were operating a home business at the time of original application.

Beck argued that the current situation is a direct result of actions of the applicant, not the ordinance. He stated that the Smiths' original Conditional Use Home Occupation permit was approved in 2010, and now, their business exceeds almost ten times the approved square footage. He added that staff fully understands the ramifications of denying the Variance and they are willing to give the Smiths a reasonable timeframe to come into compliance with code.

Wagner mentioned that in order for the Smiths to come into compliance, they would have to start over, losing everything they've established up until this point.

Beck reminded the Board that they would need to complete a Decision and Order to reverse staff decision if they vote in favor of approving the Variance. Wagner expressed concern for not receiving a copy of the Decision and Order prior to the meeting.

Motion by Hoover to adopt a Findings of Fact, Conclusions of Law, and Decision & Order in support of the Variance case JV19-0001, and to approve case JV19-0001. (See adopted Decision & Order for listing of Conclusions of Law.) Second by Machacek.

Hoover	Aye
Machacek	Aye
Harstad	Aye
Palmer	Nay
Grace	Nay

JC19-0005	Les Beck	Jason Smith & Diane Wellman-Smith, Owners	Conditional Use Home Occupation - Contractor Storage for Contractor Yard
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No staff presentation was made. All members of staff and the Board stipulated that because the associated variance case was approved, the Conditional Use Home Occupation case could be approved as well.

Motion by Palmer to adopt a Findings of Fact, Conclusions of Law, and Decision & Order in support of the Conditional Use Home Occupation case JC19-0005, and to approve case JC19-0005 subject to amended conditions. (See adopted Decision & Order for listing of Conclusions of Law.) Second by Hoover.

Harstad	Aye
Machacek	Aye
Hoover	Aye

Grace **Aye**
Palmer **Aye**

IV. OTHER BUSINESS

V. BOARD COMMENTS

VI. STAFF COMMENTS

VII. PUBLIC COMMENTS

VIII. APPROVAL OF MINUTES

The minutes of March 27, 2019 Board of Adjustment meeting were approved as submitted.

IX. ADJOURNMENT

The meeting was adjourned at 9:29 p.m.

Respectfully submitted,

Sabrina Grace, Chair

Jessie Black, Recording Secretary