

Minutes - Woodbury County Board of Adjustment Meeting February 17, 2014

The meeting convened on the 17th of February, 2014 at 6:30 PM in the Board of Supervisors Meeting Room in the Court House, Sioux City, Iowa. Present were the following Board members: Robert Brouillette, JoAnn Sadler, Brian Crichton and Katie Colling. Corey Meister was out of town. Zoning staff John Pylelo and Peggy Napier was also in attendance. Also present were Dennis Butler, Mike Maas and Larry Clausen.

The next agenda item was approval of minutes of February 3rd, 2014 meeting.

Mrs. Colling made a motion the minutes be approved as read.

Mrs. Sadler seconded the motion; motion carried 4-0.

The next agenda item was a Public Hearing and Consideration of a series of Variances applied for by the Woodbury County Board of Supervisors related to a proposed Master Permitting Agreement to be entered into with CF Industries Nitrogen, LLC.

John Pylelo read into the record the following:

The Woodbury County Board of Supervisors (County) has made application for your Board to consider granting variances to property owner CF Industries Nitrogen, LLC (CF). CF wishes to expand the company's existing fertilizer production and storage facilities in rural Woodbury County. The County wishes to enter into a fixed fee, master building permit agreement (Agreement) with CF wherein a single project-wide building permit can be issued for the length of the construction project. The purpose of the agreement is to minimize any bureaucracy associated with permit administration while streamlining and expediting the building permitting process.

To be included within the Agreement are concessions from certain administrative provisions of the County's zoning ordinances. Under state statutes variances require the review and approval by the Woodbury County Board of Adjustment. Included within the County's application are variance requests associated with:

1. Extending the expiration date of the building permit beyond the standard 12 month expiration period for up to 36 months.
2. Charging a predetermined and fixed building permit application fee for the length of the construction project. The permitting fee to be negotiated by the parties.
3. The waiving of the permitting process for temporary construction containers.

4. The waiving of the permitting process for the movement or relocation of temporary construction containers within and between staging, support, storage and construction areas of the building project.
5. The waiver of determining the exact number of structures meeting the current existing definition of “structure” within the zoning ordinances.
6. Granting the Woodbury County Board of Supervisors the authority to enter into and execute said master building permit agreement incorporating each of the approved variances into the language of the agreement document.
7. To allow the Planning and Zoning office authority to administer and enforce CF construction activity under the terms of the executed Agreement.

Notices of the public hearing were sent to fourteen (14) adjacent property owners. To date there have been no comments received. Written comments have also been requested from the Woodbury County Engineer.

Staff Recommendation

Subject to public testimony the Office of Planning and Zoning recommends approval of each of the seven (7) administrative variance requests for the following reasons:

The Office of Planning and Zoning feels the totality of the facts meet the standards established within section 2.02(8)(F) of the ordinance allowing your Board to approve any or all of the administrative variances applied for. The zoning staff has determined that as each administrative variance is not contrary to the public interest or the general intent and purpose of Woodbury County Zoning ordinances in that:

- Each of the seven (7) administrative variances will not result in an adverse impact to nearby properties.
- Each of the seven (7) administrative variances will not result in a substantial increase in congestion of people, buildings or traffic.
- Each of the seven (7) administrative variances will not result in endangerment of public health or safety.
- Each of the seven (7) administrative variances will not result an overburden to public facilities or services.
- Each of the seven (7) administrative variances will not result in impairment of the enjoyment, use or value of nearby property.

The variances in each case meet the standards of Article 2.02(8)F.(1-5) in that:

- Approval of any or all the variances does not establish a non-permitted use;
- Similar or identical variances have not been so commonly occurring to result in a defacto amendment of the zoning ordinances;
- No proposed variance results in more than minimum relief;
- No variance has impact upon the County's enforcement of its flood plain management ordinances.
- Granting the variance is necessary to assure that the owner does not suffer an economic hardship. (Note: Increased financial return or reduced costs to the applicant are not adequate cause for a finding of hardship.) A finding of economic hardship must be based on each of the following:
 - The property cannot yield a reasonable return if used in compliance with the requirements of this title;
 - The property has unique physical constraints that result in its inability to be used in compliance with the requirements of this title; and
 - The hardship is not a result of actions by the owner.
- No variance shall be granted which would permit the establishment of a use within a given district which is prohibited therein;
- No variance shall be granted which is so commonly recurring that it is a de facto amendment of this ordinance; and
- No variance shall be granted that is more than the minimum relief needed.
- No variance shall be granted to the provisions of Section 5.03 relative to flood plain management requirements unless the Board of Adjustment considers the factors listed in subsection 5.03-9.C(4).

It should be noted each of the variances applied for do not impact zoning district dimensional standards. All dimensional standards for the CF project will be met.

The meeting packets included:

- A copy of Woodbury County Zoning Ordinances applying to Variances; Article 2.02:8 (Pages 18 through 20).

Mike Maas from CF Industries had no comment. Larry Clausen and Dennis Butler had no comment.

Mr. Brouillette made a motion to close the public hearing. Mrs. Sadler seconded the motion; motion carried 4-0.

Discussion:

Board members had a few questions before they considered motions. Mr. Pylelo explained the requested variances were specifically for CF Industries Nitrogen, LLC plant expansion project. Any other subsequent project application would require its own variance application for Board of Adjustment consideration. Mr. Pylelo then made the following comment for each of the respective variances requested:

Staff recommendation comments for the consideration of a series of variances applied for by the Woodbury County Board of Supervisors related to a proposed Master Permitting Agreement to be entered into with CF Industries Nitrogen, LLC. The variances (*and comments*) under consideration on February 17, 2014 are as follows:

- 1. Extending the expiration date of the building permit beyond the standard 12 month expiration period for up to 36 months.**

It is the administrative policy of the Office of Planning and Zoning that building permits expire 12 months from date of permit issuance. Approving this variance would be within the spirit of the zoning ordinances by avoiding placing an excessive administrative burden upon CF. It would also avoid a duplication of application filings and permit fees for those uncompleted structures which by their nature may take longer than 12 months to construct.

The Board of Adjustment's approval of this variance would result in granting an extension of permit expiration to as late as December 31, 2016.

- 2. Charging a predetermined and fixed building permit application fee for the length of the construction project. The permitting fee is to be negotiated by the parties.**

The existing building permit fee schedule was adopted by the Board of Supervisors on August 1, 2003 by independent resolution. For industrial type

construction a permit application fee is computed by determining the number of structures and each respective structure's square footage.

For each structure 10,000 sf in area the permit application fee is computed as follows: \$500.00 for the initial 10,000 sf in area plus \$50.00 for each 1,000 sf over the first 10,000 sf in area.

In addition, the definition of structure within the ordinances is broad enough that it provides for a structure to be *anything constructed, erected or placed on fixed location on the ground or upon another structure. Further a structure is any movable object which is placed within a generally fixed location for any purpose other than transportation.*

In a CF Industries application a separate and independent structure will result in any of the following scenarios:

- Any structure inside or placed upon another structure.
- Multiple structures existing even if they share a common footing.
- Any structure placed on the parcel; even those only used within the construction process.
- Any structure moved from on location on the parcel to another; even those only used within the construction process.

It is anticipated hundreds of construction containers, trailers and other temporary structures will be onsite during the extended construction time line. In addition it will likely be a common occurrence that many of these temporary structures will be moved to different locations upon the construction site.

The Board of Supervisors and representatives of CF have been in negotiations relative to the appropriate Master Building permitting fee to be assessed to relieve the administrative burdens to CF and the County under variances #1 through #5. The Supervisors wish to respect the spirit of the zoning ordinances, the underlying permit application fee schedule. At the same time the Supervisors wish to offer an unencumbered and a reasonable permitting experience to major construction projects within rural Woodbury County. After evaluation the impact of the other requested variances; and the financial impact to the County to support permitting and construction administration; the Supervisors have offered CF Industries a negotiated Master Building Permit fee in the total amount of \$200,000.00.

Approval of this variance will result in allowing for a predetermined and fixed permit fee of no less than \$200,000.00 for all CF construction activity in Woodbury County related to CF Industries' plant expansion. The fee will apply to all construction activity from the beginning of construction through December 31, 2016 and is to include any site plan or construction changes.

3. The waiving of the permitting process for temporary construction containers.

See #2 narrative above. Approving this variance would result in Woodbury County waiving the permitting and permit application fees for all temporary construction containers.

4. The waiving of the permitting process for the movement or relocation of temporary construction containers within and between staging, support, storage and construction areas of the building project.

See #2 narrative above. Approving this variance would result in Woodbury County waiving the permit application process and permit application fees for movement or relocation of temporary construction containers within and between staging, support, storage and construction areas of the building project.

5. The waiving of determining the exact number of structures meeting the current existing definition of “structure” within the zoning ordinances.

Even with the exclusion of structures under variance item #2 and #3 above it will be a significant administrative burden for CF and the County to determine the exact number of structures for the computation of permit application fees for the following reasons:

- Engineering of the project is ongoing and dynamic process;
- The complex manufacturing processes and equipment results in interconnected manufacturing processes and resulting construction. In many, if not most cases, there is difficulty in determining where one structure may differentiate itself from the next.

6. Granting the Woodbury County Board of Supervisors the authority to enter into and execute said Master Building Permit Agreement incorporating each of the approved variances into the language of the agreement document.

Approval of this variance will allow the Woodbury County Board of Supervisors to approve, and allow their Chairman to execute, a Master Building Permit Agreement with CF Industries Nitrogen, LLC. The Agreement may incorporate each of the variances #1 through #7 above approved by the Woodbury County Board of Adjustment along with any conditions placed upon any respective variance approved.

7. To allow the Planning and Zoning office authority to administer and enforce CF Industries plant expansion construction activity under the terms of executed Master Building Permit Agreement.

Approval of this variance will allow the Woodbury County Office of Planning and Zoning to administer applications, assess application fees and enforce its Zoning Ordinances subject to any and all variances approved for CF Industries by

the county's Board of Adjustment whether or not incorporated within the Master Building Permit Agreement.

The Board discussed then considered the respective variances asking question of staff. The Board then determined the standards within Woodbury County Zoning Ordinances Article 2.02(8)(F) for variance approval will be met for each of the seven variances requested. Further the Board findings of fact determined that for each of the seven variances all the points enumerated within Section 2.02-8.F(1) were met and would be the basis for voting on each respective variance.

Chairman Crichton called for a motion for each variance individually;

- 1) **Mr. Brouillette made a motion to approve variance #1 extending the expiration date of the building permit beyond the standard 12 month expiration period for up to 36 months. Mrs. Colling seconded the motion; motion carried 4-0.**
- 2) **Mrs. Sadler made a motion to approve variance #2 Charging a predetermined and fixed building permit application fee of no less than \$200,000.00 for the length of the construction project. The permitting fee is to be negotiated by the parties. Mr. Brouillette seconded the motion; motion carried 4-0.**
- 3) **Mrs. Colling made a motion to approve variance #3 for the waiving of the permitting process for temporary construction containers. Mrs. Sadler seconded the motion; motion carried 4-0.**
- 4) **Mr. Brouillette made a motion to approve variance #4 for the waiving of the permitting process for the movement or relocation of temporary construction containers within and between staging, support, storage and construction.**
- 5) **Mrs. Sadler made a motion to approve variance #5 for the waiving of determination of the exact number of structures meeting the current existing definition of "structure" within the zoning ordinances. Mrs. Colling seconded the motion; motion carried 4-0.**
- 6) **Mrs. Colling made a motion to approve variance #6 granting the Woodbury County Board of Supervisors the authority to enter into and execute said master building permit agreement incorporating each of the approved variances into the language of the agreement document. Mrs. Sadler seconded the motion; motion carried 4-0.**
- 7) **Mr. Brouillette made a motion to approve variance #7 for to allow the Planning and Zoning office authority to administer and enforce CF construction activity under the terms of these variances. Mrs. Colling seconded the motion; motion carried 4-0.**

The next agenda item shall be any Citizen wishing to be heard before the Board.

No one present wished to be heard.

Mrs. Sadler made a motion to adjourn. Mr. Brouillette seconded the motion; motion carried 4-0.

Meeting was adjourned at 6:55 PM.