

Minutes - Woodbury County Board of Adjustment Meeting May 4, 2009

The meeting convened on the 4th of May, 2009 at 7:04 PM in the Board of Supervisors Meeting Room in the Court House, Sioux City, Iowa. Present were the following Board members: David Scholten, Robert Brouillette, Russell Walker, and Brian Crichton. Corey Meister had a previous commitment. Zoning Director John Pylelo and Clerk Peggy Napier were also in attendance. Present from the public were Douglas and Suzanne Draayer.

Mr. Walker called the meeting to order at 7:04 PM.

The first agenda item was election of 2009 Chairman and Vice Chairman.

Mr. Walker was elected Chairman with three (3) votes; Mr. Meister received one (1) vote. Mr. Meister was elected Vice Chair with four (4) votes.

The second agenda item was approval of the August 4th, 2008 meeting.

Mr. Brouillette made a motion to approve the minutes of August 4, 2008 as written. Mr. Scholten seconded the motion; motion carried 4-0.

The third agenda item was a public hearing and consideration of accessory structure roadway right of way setback variance request for Douglas J. and Susanne M. Draayer; GIS Parcel 8846 07 100 010.

Current Woodbury County Zoning ordinances require accessory structures to be positioned no closer to the front lot line than the front edge of the principal structure or two times the required front yard setback, whichever distance is shorter. The front yard set back for the principal structure on the Draayer parcel is 100'. The principal structure is located 110' from the front parcel line.

Mr. and Mrs. Draayer are requesting a **24 foot** (110' less 86') front yard variance for an existing 10' by 24' accessory structure built in 1950. They are also requesting a **29 foot** front yard variance (110' less 81') for an existing 10' by 12' accessory structure built in 2008. Both structures are located upon the same parcel at which the Draayers reside.

The variances are requested along the 5 acre parcel's northern property line. The parcel is addressed 1844 170th St. located on the south side of 170th St. approximately 3.0 miles east of Sioux City and located within the NE ¼ of the NW ¼ and then NW ¼ of the NE 14, Section 07,

Floyd Township. The property is zoned AP (Agricultural Preservation) and does not lie within a drainage district or a flood hazard area. The parcel is known as GIS# 8846 07 100 010.

Historical Chain of Events:

November 2004 Draayers purchase property from Calhouns

December 2004 Draayer's general contractor makes building permit application for the removal of the then existing 1930 single family dwelling and for the construction of a new single family dwelling at an alternative location on the parcel. The approved site plan shows a new dwelling located a greater distance from the 170th St. right-of-way than the previous 1930 dwelling.

The approved site plan shows the 10' by 24' accessory structure with the notation "*shed to be torn down*". There is dispute as to who and how this notation was added to the site plan as it does not reflect the applicant's now stated intent. We enclose a copy of Mr. and Mrs. Draayer's undated correspondence with attachments received by the County on 04/15/2009 as part of the variance application.

Spring of 2008 The Draayers construct a 10' by 12' accessory structure. Permitting was not obtained.

The two (2) adjacent property owners to parcel were notified in writing of this public hearing. To date no comments have been received. Due to the relationship of this variance to the County roadway right-of-way we have also contacted the County Engineer's office seeking comment on this variance application.

Attached are mapping, aerials, site photos and site plan information relative to this application. Distances of former and existing structures from 170th St. right-of-way are provided. Note: The 170th St. right-of-way and the parcel's northern property line are the same.

Planning and Zoning Department Recommendations:

The Planning and Zoning Department recommends approval of the requested 24' foot variance applying to the 10' by 24' accessory structure for the following reason(s):

- The variance request is for a structure in place prior to zoning ordinances being enacted by Woodbury County in 1971;
- The variance requests are for structures which up to the time of new dwelling construction were within compliance with then existing zoning ordinances;

- Planning and Zoning Department investigation shows no reason to dispute the facts as outlined in the applicants communication received on 04/15/2009 as part of this variance application; and
- That approval of the variance would appear to meet the terms and conditions within Article 2(8)(F)(1-5) of Woodbury County's Zoning ordinances enacted August 1, 2008.

The Planning and Zoning Department is not in a position to make a favorable recommendation of the request for the **29 foot** variance for the existing 10' by 12' accessory structure for the following reason(s):

- The accessory structure was placed upon the parcel after the relocation of the current principal structure;
- The accessory structure was placed on the parcel at a location which would not have been approved if permitting would have been timely applied for;
- The accessory structure was placed 5 feet closer to the front property line than any other existing structure on the parcel.
- The accessory structure was placed on the parcel without permitting.

However, should your Board consider approving the 10' by 12' accessory structure variance the Planning and Zoning office would recommend the following conditions be placed upon such approval:

- Approval be conditioned upon the applicant obtaining the required permitting for the construction of the 10' by 12' accessory structure; and
- Permit application fees and any penalties for commencement of construction prior to permitting shall be enforced.

The above recommendations are provided without the benefit of agency comments, including but not limited to comments from the County Engineer's Office, and any public hearing testimony to be received.

As both variances are being requested within a single public hearing format the Draayers were charged a single \$300.00 variance application filing fee.

County Engineer Nahra's comments received April 29, 2009:

The Secondary Road Department has reviewed the request for variance by Douglas and Suzanne Draayer at 1844 170th Street.

I reviewed your information packet and made a site visit. I concur with the comments of the Planning and Zoning Office in regard to the older shed built in 1950. I think that there should be a record made that while the county is granting the variance in setback on the older building, if the building is torn down for replacement or is destroyed by mishap such as fire or tornado that any succeeding building will be built in compliance with county setback requirements. This variance should only apply to this building and not any succeeding structures.

In regard to the new shed built last year, I am not opposed to having the owners move the building since they failed to get a building permit, but would note that the building in its current location does not create a significant snow trap or other problem for the road. As an alternative to moving the structure today, I would recommend allowing a variance on the setback for the structure with the provision that the owner would move the building at no cost to the county if any additional right of way is needed for improvement of 170th street. The county would still compensate for the value of any land taken, but all relocation or replacement costs and expenses for the moving or destroying the building, chicken coop and other attached fencing, electrical wiring, etc., would be the owner's to assume, and the county should be held harmless for these costs. This requirement should go with the land and subject any future landowners as well and should not be used as an excuse to build another building or shed at a similar setback. The provisions for the other building in regard to its replacement at the proper setback distance in the event of its destruction should also apply. No additions should be allowed to the building at its current location.

If there are any more questions or issues that arise later, please contact this office.

Discussion:

Mr. Pylelo explained the conditions would require a resolution be recorded so it appears in an abstract for future owners.

Mr. Brouillette did not have a problem with this.

Mr. Crichton and Mr. Scholten agreed with Mr. Brouillette.

Mr. Brouillette made a motion to approve and accessory structure roadway right of way setback variance subject to the following conditions (applied to both structures):

- **Should roadway improvements be needed along 170th St. that the structures, attached fencing, electrical wiring, lighting and utility connections will be legally removed or relocated at the property owner's expense. Woodbury County shall be held harmless for these costs. This condition shall be binding upon the current or any subsequent landowner(s).**
- **No reconstruction, enlargement, alteration or relocation of either accessory structure shall occur without application for permitting which meets the then existing standards under Woodbury County zoning ordinances. Said standards will include, but not be limited to, the then existing setback standards from parcel lines and roadway right-of-way.**

- **The required permitting for the construction of the 10' by 12' accessory structure (described as the chicken coop) shall be obtained from the Woodbury County Office of Planning and Zoning. Permit application fees and any penalties for commencement of construction prior to permitting shall be enforced.**
- **That the applicants record, at their expense, this resolution and provide a photocopy of the recorded resolution to the Woodbury County Office of Planning and Zoning.**

Mr. Crichton seconded the motion; motion carried 4-0.

The next item was any Citizen wishing to be heard by the Board.
There were not citizens wishing to be heard by the Board.

Mr. Crichton made a motion to adjourn; seconded by Mr. Scholten. Motion carried 4-0.
Meeting adjourned 7:37 PM.

The next meeting is scheduled to be Monday, June 1, 2009 at 7:00 PM pending agenda items