

**DES MOINES COUNTY, IOWA
BOARD OF ADJUSTMENT
REGULAR MEETING MINUTES
WEDNESDAY, JANUARY 26, 2022**

The Des Moines County Board of Adjustment met in regular session on January 26, 2022 at 5:00 P.M. at the offices of the Southeast Iowa Regional Planning Commission, 211 N. Gear Avenue, West Burlington, Iowa 52655. In addition, an option for attending the meeting remotely was offered through Zoom.

1. Call to Order

Chairman Sam Warner called the meeting to order at approximately 5:02 P.M.

2. Roll Call

Board members present: Randy Burgus, Dave Nuebel, Mitch Taeger, Sam Warner, John Wiberg

Board members absent: None

Staff Present: Zach James, Jarred Lassiter

Public Present: Toby Kindig, variance applicant (ZVP-22-02)
Gary Warner, neighboring property owner (9152 Gaslight Drive)

Mr. James and Mr. Wiberg attended the meeting remotely; all others attended in person.

3. Tentative Agenda Approval / Amendment

No changes to the agenda.

4. Meeting Minutes

No comments or corrections were provided regarding the minutes prepared for the previous meeting.

Motion #1: To approve the Minutes of March 24, 2020 meeting as presented.

Motion by: Nuebel

Seconded by: Taeger

Vote: Unanimous vote. Motion carried.

5. New Business

A. Annual Election of Officers

Dave Nuebel noted that he did not wish to be re-appointed as Vice Chair as he is approaching his 80th birthday and feels he has served enough time on the Board. He will be putting in a letter to vacate his position to the County in the near future.

Motion #2: To re-appoint Sam Warner as Chair of the Des Moines County Board of Adjustment, and appoint John Wiberg as Vice Chair of the Des Moines County Board of Adjustment

Motion by: Taeger

Seconded by: Nuebel

Vote: Unanimous vote. Motion carried.

B. Request for Variance from Toby Kindig for front yard setback at 5896 Christa Drive

Chairman Warner opened the public hearing at 5:07 PM.

Mr. Lassiter read the staff report, stating that Mr. Kindig is asking for a variance from the minimum front yard setback requirement for an accessory building in the R-1 One-Household Residential District. The requirement is 30 feet, and the variance would allow a setback of 5 feet, although the building would be positioned at an angle so that only the front corner of the building would be as close as 5 feet from the lot line. He said that as proposed, the building would exceed the minimum side setback by 25 feet, and would just barely meet the minimum rear setback of 5 feet. He noted that there is a leach field for the property's septic system which occupies a sizable area east of the house, which would obstruct the potential placement of a garage on that part of the property.

Lassiter also mentioned that an initial complication had delayed the permitting process for this proposed building. The applicant had, only after purchasing the property in 2020, been made aware that an 18-foot strip of land on the north part of the property was actually under separate ownership. This was likely due to an oversight from several decades prior, in which a planned, but never used utility easement was vacated, yet was never transferred to the neighboring property owners as intended. He stated that a Title Affidavit was recorded on January 6, 2022, which enables the adjoining portion of that 18-foot strip to be legally transferred to the Kindigs. He noted however, that in order to complete this process and have the change recognized by the County Assessor's Office, any outstanding taxes on the property would have to be paid.

Mr. Burgus said that he drove by the property earlier in the day, and said that there didn't appear to be any obvious safety issues with the proposed development.

Gary Warner, who resides immediately west of the Kindigs, stated that he is the Roads Commissioner for the Glenmark homeowners association, and he had not heard any negative feedback regarding Mr. Kindig's proposal. He said that from observing his neighbor's property, the outline of the proposed building was carefully flagged in preparation for development. Chairman Warner (no relation) said that he drove by the property over the previous weekend and he noticed the flags positioned in the snow.

Mr. Nuebel asked the applicant if it would be possible to rotate the footprint of the garage inward, in order to increase the front setback from 5 feet to approximately 20 feet, reducing the requested variance to only 10 feet. Mr. Kindig noted that there is an electric utility pole with guyed wires that extend into the front yard, and this would make it difficult to rotate the garage as Nuebel had suggested. He also noted there is an old well head in the vicinity that would be in the way. Nuebel asked if he could confirm that the well head is situated beyond the footprint of the proposed building. Kindig said that he'd measured it and the well head is about 1 foot away from it.

Gary Warner said that he would be concerned with potential stormwater runoff issues if the footprint of the proposed building was extended further west toward the shed on his adjoining property. Mr. Taeger noted that the topography starts to slope downward when traveling west past the Kindig property on Christa Drive, and there is a culvert between the Kindig and Warner residences (with Warner's shed situated on a non-contiguous piece of land closer to Kindig).

Mr. Warner closed the public hearing at approximately 5:30 P.M.

Mr. Taeger made a motion to accept the variance as requested. Mr. Lassiter asked Taeger, who is employed by the Des Moines County Assessor's office, whether the adjoining 18-foot wide strip of land had officially been transferred to the Kindigs yet. Taeger confirmed that this had just been completed earlier that same afternoon. Chairman Warner noted that staff had suggested that a condition be added to approval of the variance – that the Zoning Permit shall not be approved until the 18-foot wide strip is officially transferred into the ownership of Mr. Kindig and his wife. He suggested that, as a precaution, the Board should still use this condition, since an official written confirmation of the transfer had not been provided to the Land Use Administrator. Mr. Taeger agreed to this modification.

Motion #3: To grant a variance for front yard setback, to allow for a minimum setback of 5 feet, with the condition that the zoning permit for the proposed development (ZBP-22-01) shall not be approved by the Land Use Administrator until the adjoining portion of the 18-foot wide strip of land (Des Moines County Parcel #16-20-226-010) has been officially transferred into the ownership of the applicants, Toby and Tory Kindig.

Motion by: Taeger

Seconded by: Wiberg

Vote: All Ayes. Motion carried.

6. Old Business

Mitch Taeger asked about old business with Dustan Fenton, a variance applicant from March 2020 (ZVP-20-07). Taeger said that, based on observations made in his capacity as an employee of the County Assessor's office, it appears as if Mr. Fenton is starting an addition on a side of the house than the one that was included in the variance request. Mr. Lassiter said that staff would look into the matter further, as they were still waiting on Mr. Fenton to provide the results of a survey confirming the true location of his south property line.

Mr. Lassiter gave an update on the ongoing process of updating/re-approving the County's Zoning Ordinance. He stated that the Zoning Commission had met in October 2021 and made a recommendation for the Board of Supervisors to approve the revised ordinance. Since then, the Board of Supervisors has held several work sessions with Land Use staff, in order to review all of the proposed changes in this ordinance, as well as the Subdivision Ordinance. It was noted that the ordinance would likely proceed to public hearings in February.

Lassiter highlighted one major change from the ordinance update that would affect the Board of Adjustment. This would result in Home Occupation requests being reviewed and approved through the Board of Adjustment, rather than the Zoning Commission. He noted that, based on prior experience with these requests, they would likely constitute one of the more common types of requests brought before the Board, along with variances.

7. Communications

None presented.

8. Future Agenda Items

None presented.

9. Adjournment

Motion #4: To adjourn

Motion by: Nuebel

Seconded by: Wiberg

Vote: Unanimous vote. Motion carried.

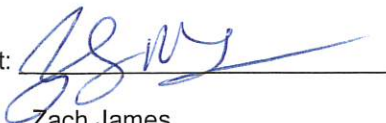
The meeting adjourned at approximately 5:35 P.M.

APPROVED:



Sam Warner
Board of Adjustment, Chair

Attest:



Zach James
Land Use Administrator