

**Board of Adjustment  
MINUTES  
May 19<sup>th</sup>, 2022**

PRESENT: Dan Gottwalt, Roy Schneider, Marvin Neubert

Staff: Roxanne Achman, Karen Loehrer

1. Dan called the meeting to order followed by the Pledge of Allegiance.
2. Roy moved to approve the agenda. Dan seconded and the motion carried.
3. Dan moved to approve the minutes from the April 21<sup>st</sup>, 2022 meeting. Marvin seconded and the motion carried.
4. File #22-082, Kevin Hackett requesting a variance to operate a feedlot within the 660ft setback from four (4) non-feedlot residences in the Agricultural District. Pursuant to Sections 9.12.3 and 11.5.1 of the Development Code. The affected property is described as follows: part of the NE1/4 NE1/4, Section 12, Minden Township.

Roxanne showed an aerial photo of the site. She stated that this feedlot has been operating for many years. The feedlot extends 180 acres to the west. The previous feedlot owners, the Murn's, platted off a lot to construct a home. As part of that process, they had to give up feedlot status of the farm because the new dwelling would be within 660ft of the feedlot. The Murn's verbally gave up feedlot status. The Hackett's purchased the property in 2013. The Hacketts are requesting a variance to continue the use of this property as a feedlot and would like to construct a feedlot building on this property. The feedlot is 550ft from PID 09.00009.02, 425ft from PID 10.00107.00, 200ft from PID 10.00105.00 and 425ft from PID 09.01314.00. Roy asked if the Hackett's planned to go to the confined feedlot operation. Mr. Hackett said no that they are a cow/calf operation.

Kevin Hackett stated that there is an intense runoff. Their plan is to build structures to house the cattle to help control runoff. All the structures will be built to the west of the existing buildings.

No one spoke in favor, opposition or with general comments. Marvin moved to close the public hearing. Roy seconded and the motion carried.

In reviewing Section 11.5.1 the vote was as follows

- A) Dan stated that feedlots are permitted in the Agricultural District. The vote was unanimous that the proposed use is not prohibited in the zoning district in which the subject property is located.
- B) Marvin cited A, I and L under Section 2.1.1. The vote was unanimous that the variance is in harmony with the general purposes and intent of the official controls.
- C) Roy stated that the variance is consistent with the Comprehensive Plan. He cited Land Use Goal #2 **Policy #2. Agriculture:** Recognize and support the agricultural practices, character and lifestyle within the County, allowing for the pursuit of agriculture as a career. And **Policy #11. Right to Farm:** Support a farmer's right to farm when they are using generally accepted farming practices. The vote was unanimous that the variance must be consistent with the comprehensive plan.
- D) 1. Dan stated that feedlots are a common use in the Agricultural District. The vote was unanimous that the Property Owner proposes to use the property in a reasonable manner not permitted by an official control.  
2. Marvin stated that property has been farmland with a feedlot on it. The previous owner got rid of the feedlot designation. The current owner did not know the feedlot designation was given up. The vote was unanimous that the plight of the landowner is due to circumstances unique to the property not created by the landowner.  
3. Roy stated that the variance will not alter the essential character of the locality. The variance will ensure the property owner can continue using the feedlot. Dan stated that the variance will put it into compliance. The vote was unanimous that the variance, if granted, will not alter the essential character of the locality.  
4. Dan stated that the inability to use this lot as a feedlot would have an economic impact on the property owners. The vote was unanimous that the need for the variance involves more than economic considerations.

Marvin moved to include the development conditions to File #22-082. Roy seconded and the motion carried.

Roxanne read the findings and conditions.

#### Findings

- A) The proposed use is not prohibited in the zoning district in which the subject property is located.

*Feedlots are permitted in the Agricultural District when they meet the required setbacks.*

- B) The variance must be in harmony with the general purposes and intent of the official controls. In accordance with:

In accordance with the following items in Section 2.1.1:

(A) To promote and protect the public health, safety, comfort, convenience, and general welfare of the people.

(I) To preserve a maximum amount of the prime agricultural land for the assurance of adequate, healthful and nutritious food for future residents of the state and nation.

(L) To further the appropriate use of land, and conserve and protect the natural resources of the county for present and future generations.

- C) The variance must be consistent with the comprehensive plan.

*It is consistent with the comprehensive plan.*

### **Land Use**

#### Goal #2

**Policy #2. Agriculture:** Recognize and support the agricultural practices, character and lifestyle within the County, allowing for the pursuit of agriculture as a career.

**Policy #11. Right to Farm:** Support a farmer's right to farm when they are using generally accepted farming practices.

- D) The variance may be granted if there are Practical difficulties in complying with the official control:

- 1) Property Owner proposes to use the property in a reasonable manner not permitted by an official control.

*Feedlots are a common use in the Agricultural District.*

- 2) The plight of the landowner is due to circumstances unique to the property not created by the landowner.

*The property has been farmland with a feedlot on it. The previous owner got rid of the feedlot designation. The current owner did not know the feedlot designation was given up.*

- 3) The variance, if granted, will not alter the essential character of the locality.

*Granting the variance will not alter the essential character of the locality. The variance will ensure the property owner can continue using the feedlot and will put it into compliance.*

- 4) The need for the variance involves more than economic considerations.

*The inability to use this lot as a feedlot would have an economic impact on the property owners.*

*Development Conditions for file no. 22-082 are adopted.*

Conditions:

1. This variance is approved for the location shown on the plans submitted with this application and is not transferable to other land.
2. A Land Use (from Benton County) and any necessary Building Permits shall be obtained prior to any construction and shall be consistent with the plans and specifications submitted with the variance application.
3. Pursuant to Section 11.5.2 of the Development Code, this variance shall automatically expire, without notice, within one year after the date of approval unless the applicant has substantially proceeded on the work. To proceed substantially means to make visible improvements to the property and to have had applied to the property at least 40% of the people hours which it is reasonably estimated will be necessary for completion of the project. The Board of Adjustment may grant an extension of six months to complete the project if a written request for additional time is filed with the Board of Adjustment prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.
4. The applicant shall permit reasonable access for the County to periodically inspect the site at reasonable times and in a reasonable manner to ensure that the permit holder is in compliance with the conditions of approval and all other applicable statutes, rules and ordinances.

Roy moved to accept the findings and conditions and grant File #22-082. Marvin seconded and the motion carried. The applicant was given a copy of the findings, conditions and decision.

5. File #22-096, Tammy Sexton requesting a variance to construct a deck addition 75ft from the ordinary highwater mark (100ft required) in the R-3 Residential District. Pursuant to Sections 7.14.5(C)(1) and 11.5.1 of the Development Code. The affected property is described as follows: Lots 2 and 3, Block 1, Ferry Point Addition, Section 8, Watab Township.

Roxanne showed an aerial of the site. The request is to add a deck onto an existing house. The house was constructed in 1993. The land use permit at that time stated that the house would be setback 100ft from the ordinary high water. Current measurements place the home approximately 87ft from the ordinary high-water mark. The proposed deck would put the structure approximately 75ft from the ordinary high-water mark. The house is out of the floodplain but within the shoreland district.

Jeremy Legatt, Builder, 6151 Hwy 25 NE stated that the landowner would like to replace the deck with the deck that follows the contour of the house. The patio will also be replaced at 12ft and the retaining walls will be redone.

Roxanne stated that Watab Township reviewed this request at their meeting and are in favor.

Marvin moved to close the public hearing. Roy seconded and the motion carried.

In reviewing Section 11.5.1 the vote was as follows

- A) Dan stated that decks meeting the required setbacks are permitted in the R-3 District. The vote was unanimous that the proposed use is not prohibited in the zoning district in which the subject property is located.
- B) Marvin cited A, C and L under Section 2.1.1. The vote was unanimous that the variance is in harmony with the general purposes and intent of the official controls.
- C) Roy cited Environment & Natural Resources Goal #1 Policy #2. Development Review. Protect the integrity of major natural resources through development review and regulation. And Goal #3 Policy #1. Best Management Practices. Protect water quality by encouraging the use of “Best Management Practices” and other features of the County’s Water Plan in private development and public improvements. The vote was unanimous that the variance is consistent with the comprehensive plan.
- D) 1. Dan stated that a deck is a common accessory to residential dwellings. Most houses have decks on them. The vote was unanimous that the Property Owner proposes to use the property in a reasonable manner not permitted by an official control.  
2. Marvin stated that when the home was constructed, it was not built according to the setbacks in place at that time and as documented on the permit. Roy stated that there was no inspection to ensure the house met the setbacks. The house was built by the previous owner. The vote was unanimous that plight of the landowner is due to circumstances unique to the property not created by the landowner.  
3. Dan stated that the variance will not alter the essential character of the locality. Homes in this area appear to have similar setbacks. The vote was unanimous that the variance, if granted, will not alter the essential character of the locality.

4. Roy stated that yes economics are not a factor in this variance request. This is an expensive improvement and will improve the safety of the deck. The vote was unanimous that the need for the variance involves more than economic considerations.

Marvin moved to add the development conditions to File #22-096. Roy seconded and the motion carried.

Roxanne read the findings and conditions

### Findings

- A) The proposed use is not prohibited in the zoning district in which the subject property is located.

*Decks meeting the required setbacks are permitted in R-3 District.*

- B) The variance must be in harmony with the general purposes and intent of the official controls. In accordance with:

In accordance with the following items in Section 2.1.1:

(A) To promote and protect the public health, safety, comfort, convenience, and general welfare of the people.

(C) To promote the orderly development of residential, business, industrial, recreational and public areas.

(L) To further the appropriate use of land, and conserve and protect the natural resources of the county for present and future generations.

- C) The variance must be consistent with the comprehensive plan.

**Environment & Natural Resources**

Goal #1

**Policy #2. Development Review:** Protect the integrity of major natural resources through development review and regulation.

Goal #3

**Policy #1. Best Management Practices:** Protect water quality by encouraging the use of “Best Management Practices” and other features of the County’s Water Plan in private development and public improvements.

- D) The variance may be granted if there are Practical difficulties in complying with the official control:

- 1) Property Owner proposes to use the property in a reasonable manner not permitted by an official control.

*A deck is a common accessory to residential dwellings. Most dwellings have decks on them.*

- 2) The plight of the landowner is due to circumstances unique to the property not created by the landowner.

*When the home was constructed, it was not built according to the setbacks in place at that time and as documented on the permit.*

- 3) The variance, if granted, will not alter the essential character of the locality.

*Granting the variance will not alter the essential character of the locality. Homes in this area appear to have a similar setback.*

- 4) The need for the variance involves more than economic considerations.

*Yes, economics are not a factor in this variance request. This will improve the safety of the deck.*

*Development Conditions for file no. 22-096 are adopted.*

Conditions:

1. This variance is approved for the location shown on the plans submitted with this application and is not transferable to other land.
2. Prior to applying for any construction permits, the elevation shall be verified to determine the location of the Base Flood Elevation and Regulatory Flood Protection Elevation. Should the structure be within the floodplain, floodproofing will be required.
3. A Land Use (from Benton County) and Building Permit (from Watab Township) shall be obtained prior to any construction and shall be consistent with the plans and specifications submitted with the variance application.
4. Pursuant to Section 11.5.2 of the Development Code, this variance shall automatically expire, without notice, within one year after the date of approval unless the applicant has substantially proceeded on the work. To proceed substantially means to make visible improvements to the property and to have had applied to the property at least 40% of the people hours which it is reasonably estimated will be necessary for completion of the project. The Board of Adjustment may grant an extension of six months to complete the

project if a written request for additional time is filed with the Board of Adjustment prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

5. The applicant shall permit reasonable access for the County to periodically inspect the site at reasonable times and in a reasonable manner to ensure that the permit holder is in compliance with the conditions of approval and all other applicable statutes, rules and ordinances.

Roy moved to accept the findings and conditions and grant File #22-096. Marvin seconded and the motion carried. The applicant was given a copy of the findings, conditions and decision.

6. Roy moved to adjourn at 7:35 p.m. Dan seconded and the motion carried.

Respectfully submitted,

Karen E Loehrer  
Administrative Assistant