

BOARD OF ADJUSTMENT

DYERSVILLE, IOWA

Lower Level Council Chambers

DATE: August 21, 2019

THE ZONING BOARD OF ADJUSTMENT IS A QUASI-JUDICIAL BOARD CREATED BY THE CITY OF DYERSVILLE. THE BOARD'S PURPOSE IS TO DECIDE ON APPLICATIONS FOR VARIANCES FROM THE ZONING ORDINANCE (CHAPTER 165 OF THE MUNICIPAL CODE), APPEALS OF DECISIONS OF THE ZONING OFFICIAL, AND APPLICATIONS FOR SPECIAL PERMITS AND FOR EXCEPTIONS REQUESTED UNDER THE ZONING ORDINANCE.

WE ARE AN INDEPENDENT BOARD OF CITIZENS AND NOT PART OF THE CITY ADMINISTRATION. WE ARE SERVED IN OUR EFFORTS BY A CITY ATTORNEY AND STAFF MEMBERS.

MEETING CALLED TO ORDER: 6:00 P.M. by Chairperson Klostermann

ROLL CALL: Present: Board Members: Robin Bauer, Steve Boeckenstedt,
Jeff Jacque, Mary Klostermann,
Ann Salter, Steve Timp
Absent: Jeff Geistkemper

Item #1: Election of Chairperson

Jeff Jacque nominated Mary Klostermann for Chairperson. Motion seconded by Steve Boeckenstedt

Voice Call Vote:

Ayes: Robin Bauer, Steve Boeckenstedt,
Jeff Jacque, Mary Klostermann, Ann Salter, Steve Timp
Nays: None

Motion Carried

Steve Boeckenstedt made a motion to cease nominations. Motion seconded by Jeff Jacque.

Item #2: Election of Vice Chairperson

Steve Timp nominated Steve Boeckenstedt for Vice Chairperson. Motion seconded by Robin Bauer.

Voice Call Vote:

Ayes: Robin Bauer, Steve Boeckenstedt,
Jeff Jacque, Mary Klostermann, Ann Salter, Steve Timp,
Nays: None

Motion Carried

Steve Boeckenstedt made a motion to cease nominations. Motion seconded by Jeff Jacque.

Item #3: Approve Minutes of the September 19, 2018 Meeting.

Chairperson Klostermann asked for questions or comments regarding the minutes and there were none.

Jeff Jacque made a motion to approve the minutes of the September 19, 2018 Meeting. Motion seconded by Robin Bauer.

Voice Call Vote:

Ayes: Robin Bauer, Steve Boeckenstedt,
Jeff Jacque, Mary Klostermann, Ann Salter, Steve Timp,
Nays: None

Motion Carried

CASE NO. 01-2019

TYPE OF REQUEST: Variance to the front yard setback at 1042 and 1044 13th Street SE, Dyersville, Iowa as required in Section 165.23 of the City Code. Request submitted by Brad Lawrence with Lawrence Construction.

(CASE SHEETS ATTACHED)

BOARD OF ADJUSTMENT CASE SHEET

August 21, 2019

THE ZONING BOARD OF ADJUSTMENT is authorized to grant a Variance or Special Exception provided **ALL OF THE FOLLOWING REQUIREMENTS** have been addressed:

I. UNNECESSARY HARDSHIP:

To support a Finding of Unnecessary Hardship, the Board must, upon competent evidence, determine:
That the land in question cannot yield a reasonable return if used only for the purpose allowed in the zone.

- A. The plight of the owner is due to unique circumstances and not to the general conditions in the neighborhood, which may reflect the unreasonableness of the Zoning Ordinance itself.
- B. The use to be authorized by this variance will not alter the essential character of the area.

II. THE VARIANCE will not be contrary to the Public Interest.

III. THE SPIRIT of the Ordinance is protected.

IV. SPECIAL EXCEPTION:

Use of a property not otherwise permitted by Ordinance but permitted as Special Exception Uses as stated in the Dyersville Municipal Code.

CASE NO. 01-2019

TYPE OF REQUEST: Variance to the front yard setback at 1042 and 1044 13th Street SE, Dyersville, Iowa as required in Section 165.23 of the City Code. Request submitted by Brad Lawrence with Lawrence Construction.

Brad Lawrence was present and stated his townhouse is 3' too close in the front yard. Chairperson Klostermann asked if the building was already there and Lawrence advised it was. Lawrence stated the front was lined up with the Meyer house next door and he wanted to stay far enough from the rear yard rock bed and water area; they kept the 30-foot setback. They did not realize the front of one garage bumps out 3' and the other 2' too far into the front yard until the structure on the other side of the property was being build and it was mentioned to them.

The board asked City Administrator, Mick Michel if there was a building permit. Michel stated there was a permit and it listed the 30' setback in the front. Board Member Jeff Jacque asked Lawrence at what point did he realized he was out of compliance. Lawrence stated it was discovered once the framing was up. Jacque indicated that would have been a good time to ask for the variance. Lawrence advised he met with Michel a month ago, and the next meeting was this one. Jacque asked if he continued with the construction after meeting with Michel. Lawrence advised he did. Jacque stated maybe he should have stopped construction at that point.

The board asked Lawrence what his hardship was for the variance request. Lawrence advised he had issues with the rock in the backyard and not being able to get his footings in. Jacque asked if Lawrence just took it for granted that he could move his structure forward without checking. Lawrence stated he did not take it for granted. He thought he was still in compliance. Jacque advised this is a hard matter to consider. We can't have contractors going around town changing things and after the fact come to the board to grant a variance for their mistake. The board could be setting a precedence with all the

contractors expecting the same. Lawrence stated that when looking at the structure it is in harmony with the other structures. Board member, Steve Timp, asked what his hardship was. Lawrence advised it is the location of the rock bed in the back yard and this was realized when they started digging. Jacque asked if the city had any comments regarding the issue, Michel advised he would reserve comment until all other comments were heard.

Klostermann asked if there were any comments from the audience in support or against. There were no comments.

City Administrator, Mick Michel, stated he had questions regarding Lawrence's testimony. The request is asking for a 3' variance on one garage and a 1' variance on the other garage. He stated during Lawrence's testimony he stated a 3' variance on one and a 2' variance on the other. Lawrence clarified it is a 3' variance on one and a 1' variance on the other. Michel stated the building permit does show the bump outs of the garages with a 30' setback. Michel stated that Lawrence is giving the topographical layout due to the rock in the rear of the lot and the water flow as the hardship. Michel indicates that is a hardship but a very thin one. Michel agrees the contractor should have come forward sooner and stopped construction. Jacque was upset that the construction kept going. Michel stated the City does not have a building inspector and the city does not seek out these issues, we take the word of the contractor. It is up to the board to determine if the hardship presented is enough to grant the variance. Michel gave Lawrence credit for coming forward but felt it could have been done earlier. Timp asked if the city had the option to cease and desist. Michel advised it was not a formal complaint nor did the city seek it out. The city checks out issues on a complaint basis. Since there wasn't a formal action requested and Lawrence did come in on his own; that is in Lawrence's favor.

Michel advised the board their decision lies with the evidence. There is a topographical obstacle with the rock in the back, there is an issue of 3' on one side and 1' on the other, and there were no neighbors present speaking against it. It is up to the board to make the decision. The hardship is there, but it is thin. Michel did not agree with the actions, but Lawrence did come forward.

Board Member, Robing Bauer, asked if there was any other recourse than taking down the building. Michel advised there is not. The discretion would fall with the zoning administrator. Michel stated Lawrence is making the effort to correct the issue so it would be inappropriate to impose a municipal infraction. If the board does not grant the variance, then Michel would act and file a municipal infraction, stop construction and have Lawrence bring the structure into compliance.

Board Member, Steve Boeckenstedt, asked if Lawrence did not come forward and no one would have come forward, the city would not have known there was issue? Michel said that could have happened, but the structure would have been non-conforming. Michel stated he does do some spot inspections but not all are inspected. Bockenstedt asked if the city should require inspections. Michel advised the city does not currently have the staff to do all inspections. Timp, asked if the only inspections done were by the state. Michel advised the state has their requirement for building inspections and fire inspection by the fire Marshall.

Michel stated the issue was for the board is determine if the evidence supports the topographical hardship. Boeckenstedt stated he was new to the board and wanted to know if the board had other issues like this in the past. He was advised it did several years ago and it was passed through.

After no further discussion, Jeff Jacque made a motion to approve the 3' and 1' variances to the front yard setbacks at 1042 and 1044 13th Street SE, Dyersville, Iowa as required in Section 165.23 of the City Code based on section 165.33(7)(b) with the hardship being the topographical issue. Motion was seconded by Steve Boeckenstedt.

Roll Call Vote: **Ayes:** Robin Bauer, Steve Boeckenstedt,
Jeff Jacque, Mary Klostermann, Ann Salter
Nays: Steve Timp

Motion Carried

ADJOURNMENT: Motion: Robin Bauer Second: Steve Timp Time: 6:22 p.m.
Voice Call Vote: Ayes: All Nays: None

Motion Carried



Lori A. Pantan – Recording Secretary

9/21/19
Date