

STORY COUNTY



PLANNING AND DEVELOPMENT

STORY COUNTY ADMINISTRATION
900 6TH STREET
NEVADA, IOWA 50201-2087

"Commitment, Vision, Balance"

MINUTES

STORY COUNTY

BOARD OF ADJUSTMENT

AN AUDIO RECORDING OF THE FULL MEETING MAY BE FOUND IN THE PLANNING AND DEVELOPMENT DEPARTMENT, OR BY VISITING WWW.STORYCOUNTYIOWA.GOV

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|-----------------------------------|-------------------------|------|
| DATE: August 16, 2023 | Matthew Neubauer, Chair | 2026 |
| | Andrew Friend | 2027 |
| CALL TO ORDER: 4:00 pm | *Kelli Excell | 2023 |
| | Nathan Hovick | 2024 |
| PLACE: Public Meeting Room | Elara Jondle | 2024 |
| In the Administration Building | *Absent | |

Special Note: Members of the public could also participate via Zoom.

STAFF PRESENT: Marcus Amman, Interim Director; Andrea Wagner, Planner and Leslie Day, Recording Secretary.

PUBLIC PRESENT: Brad McCartney, Hilary McCartney, Ryan Frahm, Scott Renaud (Zoom).
Sue & Terry (Zoom).

APPROVAL OF AGENDA:

MOTION: Hovick moved to approve the agenda as is.

Motion: Hovick

Second: Friend

Voting Aye: (MCU)

Voting Nay: None

Not Voting: None

Absent: Excell

Motion passed.

APPROVAL OF MINUTES:

MOTION: Jondle moved to approve the minutes as presented.

Motion: Jondle

Second: Friend

Voting Aye: (MCU)

Voting Nay: None

Not Voting: None

Absent: Excell

PUBLIC COMMENTS: None

PUBLIC HEARING: Discussion and Consideration of V23-000002, McCartney Front Setback Variance Request - Andrea Wagner

Andrea Wagner presented on the V23-000002 McCartney Front Setback Variance Request.

Jondle asked what were the side yard and rear yard setbacks.

Wagner responded side yard setback is 10 feet and rear yard setback for accessory structures is 2 feet.

Friend asked to see the overhead photos of the lot and point the location of the chicken coop. Then asked Wager if the chicken coop was to be rebuilt or moved, if it could go North West of the house.

Wagner responded that is correct, and that she specifically wrote on her report that a chicken coop could be placed there, perhaps not of the same size or design, but one could be placed there.

Neubauer asked to clarify how the home is from 2018, but the streets do not meet current code.

Wagner said that is correct, it is an old subdivision but that lot was not developed until the past few years.

Public Comments:

Brad McCartney, 5769 North Swing, Ames, Iowa, stated his name and address.

Friend asked Mr. McCartney when considering this chicken coop, why they did not apply for a building permit.

McCartney explained as a builder that was poor overlook in his part, he was busy, he had the chickens in the garage, so they hurried and did it. He explained they already knew where they wanted to put it, and got it done.

Jondle asked when construction started.

McCartney responded early June, or maybe before, May or June.

Friend stated he thinks the staff report says May. Friend asked Wagner when she noticed it.

Wagner responded it was in May that Amman noticed it and talked to the McCartneys about the ongoing construction.

Friend asked when in May did Amman see it, and if it was a structure or concrete pad.

Amman responded it was May 15 and there was a structure up.

McCartney added when Amman showed up the walls were up.

Friend asked if the chicken coop is on a concrete pad or posted on the ground.

McCartney responded it is posted in the ground. Also added it is built almost like a house, so it is more than a chicken coop should be. He explained that the overall idea was for it to look like a miniature version of their house, so it is not an eye sore for the neighbors and it is presentable.

Ryan Frahm, 5743 North Swing, Ames, Iowa, (east neighbor) wanted to know the stance of the County on the road (North Swing), because in 2020 when he applied for a conventional home loan he was denied because it was considered a private drive in the appraisal. He added that up to that point, the neighbors had considered it a private drive. He would like to understand if he needs to update his bank, if it presents a risk. He added that all these findings, where they have to measure the offset from what he thought it was a private road, it was something they did not consider.

Neubauer asked Wagner to comment on that.

Wagner explained this subdivision has a platted road right of way, so it is a privately maintained road, but publicly dedicated based on subdivision platting documents. There is road right of way shown on Beacon which indicates that it has a public dedication. Privately maintained, but public dedication. Not the same as a private driveway or easement to one or two homes.

Jondle asked if that was what the black line was on the photo.

Wagner said in Beacon it shows it as a purple line and asked Amman to pull it up.

Friend asked when the subdivision was originally platted.

Wagner said she did not know the exact year.

Friend asked if Wagner had an idea of what decade it was.

Wagner responded maybe the seventies.

Fraham stated his house was from 1993.

Wagner added that it could be seventies or eighties.

Neubauer asked what impact private or public roads have on the setbacks

Wagner responded there are no distinctions between privately or publicly maintained roads in the ordinance. She added that setbacks are taken from the road right of way, and in the McCartney's property, the road right of way and property line are almost a match.

Friend asked if the 17 feet are from the purple line (shown on the Beacon image).

Wagner answered yes, as close as she could get to it on site, because the road right of way is an invisible line, but based on Beacon it looked like the property line and that paved portion of the road matched up, so that is where she took the measurements from.

Friend asked Wagner to explain the R1 Transitional zoning.

Wagner explained the R1 Zoning District is for Residential purposes, 25,000 sq. ft minimum lot size. That Zoning District is seen more in the older subdivisions, the newer ones have larger lot size requirements. Transitional districts are usually closer to City limits, but this is an older subdivision.

Friend stated he did not see reasons to amend the Findings of Fact. Friend refer to the legal principal of Finding unnecessary hardship if an owner cannot establish any beneficial use on the property, and stated there is a fairly new house in the property which is the beneficial use of the residential property and the chicken coop is an accessory non- commercial. Also added that the chicken coop could be a smaller structure and located somewhere else.

Hovick asked if there is a speed limit on the road.

Wagner responded she did not see one.

Hovick added that at 25 mph it takes 56 feet to stop on average. It is a curved public road, and the coop being so close to that road, could be a danger for unfamiliar drivers in the area.

Neubauer stated he was struggling with the first legal principal, he mentioned in 2006 there was a similar situation in which a variance was granted, but then in 2001 the Supreme Court shut down how the board can get around it, so he has to agree with staff recommendation.

McCartney asked for an explanation of the unnecessary hardship legal principle.

Neubauer deferred the question to Wagner but added that, for some background, that changed the ability to do something as a board.

Wagner explained that when it comes to beneficial use or unnecessary hardship the legal standard is not that the property could be improved or more profit could be made if a variance is granted. The standard is that a reasonable return could not be garnered from a permitted use. A lack of a reasonable return may be shown by proof that the owner has been deprived of all beneficial use of their land. So, variances would need to be granted because it was the only way to get a beneficial permitted use on the property.

Amman added that the main question is if they could get a reasonable return for their property without the variance. The house on the property already provides a reasonable return.

Hilary McCartney, 5769 North Swing, Ames, Iowa, stated Neubauer had said that it was 2001 when something shifted.

Wagner clarified that Neubauer misspoke, the Supreme Court case was not in 2001, it was in 2021.

Neubauer, confirmed it was 2021. And that court case made that standard much harder to meet.

Friend explained that legal principal is in relation to the primary dwelling, which is the use of the property, which provides a reasonable return, and the chicken coop is an auxiliary.

Jondle agreed and stated she understood both sides, but it is a legal thing and some of the items have not been met.

Motion: Friend moved to approve the Findings of Fact for Variance V23-000002 based on the additional testimony.

Second: Jondle

Voting Aye: Friend, Hovick, Jondle, Neubauer

Voting Nay: None

Not Voting: None

Absent: Excell

Motion passed.

Motion: Jondle moved that the Story County Board of Adjustment denies the McCartney Setback variance request, as requested by the applicant and put forth in case V23-000002, for a variance of 22 feet from the required front setback of 40 feet to allow the chicken coop to have a setback of 18 feet in the R-1 District.

Second: Hovick

Voting Aye: Friend, Hovick, Jondle, Neubauer

Voting Nay: None

Not Voting: None

Absent: Excell

Motion passed.

STAFF COMMENTS

Wagner stated Marcus Amman became the Interim Director.

MOTION: Jondle moved to adjourn the meeting.

Motion: Jondle

Second: Friend

Voting Aye: MCU

Voting Nay: None

Absent: Excell

Motion passed.

ADJOURNMENT: 4:36 PM



Approval of Minutes

Chairman 09/20/2023

Title and Date