

**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

DATE: February 19, 2025	Matthew Neubauer, Chair	2026
	Andrew Friend	2027
CALL TO ORDER: 4:00 pm	Kelli Excell	2028
	Nathan Hovick	2029
PLACE: Public Meeting Room	Elara Jondle	2025
In the Administration Building and Zoom	*Absent	

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

STAFF PRESENT: Leanne Harter, Director; Andrea Wagner, Senior Planner; Crystal Davis, County Outreach and Special Projects Manager; Leslie Day, Recording Secretary.

PUBLIC PRESENT: Kenneth Frame, Darrell Hocking.

APPROVAL OF AGENDA:

MOTION: Hovick moved to approve the agenda as is.

Motion: Hovick

Second: Jondle

Voting Aye: All

Voting Nay: None

Not Voting: None

Absent: None

Motion passed. MCU.

APPROVAL OF MINUTES:

MOTION: Excell moved to approve the September 18, 2024, minutes.

Motion: Excell

Second: Hovick

Voting Aye: All

Voting Nay: None

Not Voting: None

Absent: None

Motion passed. MCU.

APPROVAL OF FINDINGS OF FACT:

None.

PUBLIC COMMENTS:

None.

NEW BUSINESS:

None

PUBLIC HEARINGS:

Discussion and Consideration of V25-000001, Hocking Front Setback Variance Request - Andrea Wagner

Wagner presented the Hocking Front Setback Variance Request V25-000001.

All legal principles shall be satisfied for the Board of Adjustment to grant a variance.

A. Finding of unnecessary hardship

- The land in question cannot yield a reasonable return if used only for a purpose allowed in that zone;*
- The plight of the owner is due to unique circumstances and not to general conditions in the neighborhood which may reflect the unreasonableness of the Ordinance itself; and*
- The use to be authorized by the variance will not alter the essential character of the locality.*

B. Granting the variance will not be contrary to the public interest; and

C. The spirit and intent of the Story County Development Plan and Story County Land Development Regulations are protected.

Friend asked how many legal principles were not met.

Wagner replied that the first two legal principles under “unnecessary hardship” were not met.

Excell asked what materials the building was made of.

Wagner replied she believed it is a Morton style pole building, but the applicant could clarify.

Neubauer opened Public Comments.

Darrell Hocking, 10124 630th Ave. Radcliffe, IA 50230, stated the property is just inside Story County lines by approximately a quarter of a mile. He apologized for not having the building permit and explained he should have checked with his contractor when he built it. Hocking explained he built this building in that location to replace the garage he lost during the derecho in 2020. He explained he had a spot that would make it easier to get his motor home in and out of the property, and they were also in the process of putting another house on that property and subdividing it into two separate parcels.

Friend asked the applicant what the primary use of the building is.

Hocking replied it is being used as storage right now.

Hovick asked if the building that got destroyed was in the same location as the new building.

Hocking responded it was to the east of the property from the house.

Excell asked to clarify if the building that got destroyed during the storm was in the same place as the building in question.

Hocking replied that it was not.

Kenneth Frame asked for the aerial photo to be shown on the screen.

Frame explained (off microphone) that he is Hocking's son-in-law and he, and his wife, are planning to move into the property. So, they would like to split the property and that is why they did not rebuild the garage in its previous location, because it would have been on the way. He explained that when they built the garage the contractor should have known about setbacks and permit requirements and would have taken care of that.

Friend asked if because of the way the building faces, six (6') feet could not be cut off.

Frame answered that is correct and explained. He also mentioned they investigated ways to make the building compliant.

Neubauer asked what the cost was.

Hocking answered they had talked to the contractor but never got any further than just talking about it.

Frame stated the building itself was about \$40,000.

Friend asked if the inside was unfinished, gravel, cement, dirt, floors.

Hocking and Frame answered it is gravel.

Kenneth Frame noted his address of 10124 630th Avenue. Radcliffe for the record. He stated that there are no other farmhouses around that area. He explained that the nearest farmhouse has buildings that are also about that distance from the road as the accessory building on the Hocking property, so that was another reason they did not question the distance.

Hocking added that the house about a mile south is on the right-of-way line. But it has been there for as long as they have been in the area.

Neubauer asked if there are any other structures on the property besides the house and the building in question.

Hockings replied there is a corn crib, the original farmhouse, and the log cabin.

Neubauer closed public comments.

Friend clarified the discussion is the two legal principles: reasonable return and unique circumstances. He asked Staff if on the reasonable return, the fact that there is no other garage on the property could be considered.

Wagner replied that while most houses in the county have a 2-car garage, the question is whether space is available to place it where it meets setbacks.

Neubauer said it was hard to figure out how to meet the principles, and those principles must be met. He added he could understand the unnecessary hardship part, because that is a significant cost that the applicant would need to pay.

Hovick said it is not really an "unnecessary hardship," because they caused the hardship by building the garage in the wrong spot. So, it was a self-caused hardship.

Excell said that they are dealing with laws that apply because the property is in the county, but not much applies to the situation.

Hovick asked if there is any zoning that does not require a 50-foot setback.

Wagner responded that there are different zoning districts. like the R-1 residential zoning districts that you see in subdivisions that are designed with smaller setbacks.

Hovick asked if it would be spot zoning to rezone it by doing a subdivision.

Wagner responded that the property is A-1 Agricultural Zoning. To rezone to R-1, which has 40 ft. setbacks, the property would have to be in an urban expansion area of a city, an area that is going to be annexed. So, if the applicant requested rezoning, they would only be eligible to ask for A-R zoning, Agricultural-Residential, which also has 50 ft. front setback.

Frame said that after learning about the violation he did research, and learned that for the State of Iowa, the default setbacks are 30-35 feet, so Story County is more restrictive. He asked the Board if they could take that into account for this given location and the amount of traffic.

Friend asked Wagner to confirm if it was also 50 ft. front setback.

Wagner confirmed it was 50 ft. setback for accessory structures.

Hovick asked how the Planning and Development staff became aware of this setback not being met.

Wagner responded it was through the subdivision plat that was submitted where front setback line is shown as going right through the building.

Hovick expressed that in his opinion the situation is unreasonable in this case, however, he noted that legally, there is no alternative but to deny it.

Friend also expressed it is an unfortunate situation because the building could have been placed further back to meet setbacks.

Excell asked if Hocking's contractor did not want to come and support him at the meeting.

Hocking pointed out that he is a disabled veteran, so funds are restrictive.

Friend asked if being a disabled veteran could be the plight of the owner is due to unique circumstances.

Frame stated that they are the 3rd generation on the acreage, and he and his wife are trying to establish a location for Lee and Darrell to remain on the acreage, because it's getting harder for them to take care of it, and they love the country and the acreage. He added that the split was to get a dwelling for Darrell and his wife to live in, but also for them to be on the property. Frame explained he is in the process of buying the acreage from Lee and Darrell, and they are at risk of losing the loan because this issue has been dragging, finalizing it for the last eight to nine months. Frame explained that the split of the property was not only to keep the acreage in the family and keep Lee and Darrell on the acreage, but also to provide some money to help supplement their income. He added his mother-in-law is disabled and Darrell is a disabled veteran, both retired, so Frame and his wife want to be in the acreage to help take care of them as well as live and take care of the acreage.

Excell asked Frame to further talk about nearby home he had mentioned earlier which is encroaching in the setbacks by more than the Hockings.

Frame said it looks like it is encroaching more than them because at the Hockings property they have the ditch, then the tree line, and then the shed. He recognized he did not know when the setback was established, but he thinks that farmhouse was probably built before that, so it is probably grandfathered in.

Excell asked staff if there was anything that could be done with that information.

Wagner explained that older homes and older farmsteads are considered legal non-conforming because we did not have zoning until 1958. As such, if structures pre-date 1958, there were no setbacks for them to have met.

Excell asked if knowing that the setback for that road is that compromised already changes anything.

Wagner explained that if this were a denser area where the whole “block” was built up where everybody was encroached on the setback, then we would apply the natural setback. She gave Fernald as an example of a denser area where that happens, but in this case, it does not have the same neighborhood characteristic where everything is built up on top of the front setback, because there is some distance between the homes.

Excell inquired whether it would be possible to table the discussion until additional information could be obtained regarding the properties in the area and whether they encroach and the extent of encroachment.

Wagner said the Board could vote to table the discussion.

Neubauer expressed his concern was the applicant would have to wait another month for a decision.

Friend stated that the plight of the owner is due to unique circumstances. He asked if the applicant used a local contractor, and if the contractor should have requested a permit, and if they have a contract or documentation that says that the contractor was tasked with getting all necessary permits.

Hovick added if the contractor were tasked with getting all necessary permits, the cost for moving the building would be on the contractor, but that would all be up to their personal contracts. The Board does not have authority over that.

Neubauer expressed that all the processes required for just six feet seem wasteful.

Hovick indicated that the house to the south was mentioned earlier, noting it shows on Beacon as being forty feet from the center of the road. He asked staff what that setback is.

Wagner responded that if it is forty feet from the center, which would make that setback seven feet.

Hovick added that is significantly more encroachment than the building in question.

Excell stated that she was recently in court where all the legal principles were applied for a case, but the judge ultimately dismissed it. She clarified that she was not advocating for the Board to take the same approach, but expressed concerns about the potential waste involved, noting that it may not be environmentally or financially beneficial. She mentioned that she did not see any advantage to relocating the building and, although this variance might not meet all legal requirements, she was struggling to identify any benefit to moving it six feet.

Jondle said that as the Board of Adjustment it is their job to see it meets the legal requirements.

Excell responded she did not know what the leeway was, as a quasi-judicial entity.

Hovick said it is his opinion they should follow the letter of the law, and if the applicant wanted to fight the decision the Board made, they can.

Neubauer asked staff to clarify if the applicant has that option.

Wagner replied that if the Board did not vote to table the discussion, and instead made an approval or a denial vote, the applicant would have 30 days, from the date that the findings of fact are signed, which would happen at the next Board of Adjustment meeting, to appeal the decision to the District Court.

Friend said the only things he thought could be considered are the reasonable return include that most houses have garages or parking spaces, and the plight of the owner is either related to the fact he is a disabled veteran, or the contractor should have been responsible. He added that ideally it would be documented that the contractor was to build a building and pull the necessary permits. He asked the applicant if they had that.

Hovick stated the Board could not consider the yield of reasonable return because the building could have been placed in the correct place. He added their hands were tied to what decision they were legally required to make. He said it would probably be better to move on with the denial, and they could then appeal if that is what they decide to do next.

Excell inquired about what the Board could approve if they were unable to approve of something of this nature and questioned whether their role was simply to approve everything that comes before them.

Wagner responded that she was not the appropriate person to answer that question and suggested that the issue could be lobbied to the State Legislature for potential changes. She explained that before the 2021 case, it was a little easier for the Board to grant variances. She added the Board of Adjustment granted a variance in a different case before that, but now it is difficult with the way the case was written.

Frame spoke (off microphone) and asked why there is a variance process if variances cannot be approved.

Wagner responded there are cases that could meet all the legal principles.

Friend added that generally, they review variances for things that have not been built yet.

Hocking and Frame spoke off microphone explaining what they thought their contractor would do.

Excell, said that based on her professional experience, it is fair to believe that the contractor would take care of everything. She added she did not think that it would need to be written in a contract.

Harter reminded the Board they had closed public comments.

Neubauer stated they had closed public comments, but he unofficially reopened them. He also said he agreed with Hovick on the second principle, and that this is a building to replace a storm damaged structure. He added he also knows that the responsibility of getting the permits is ultimately responsibility of the landowner. Also, the first principle, based on the definition that is set by the court, he said he did not know how to get over that.

Friend asked the owner if they were doing any business on this building.

Hocking replied that the building is for personal use.

Hovick stated that he had hoped that the answer to his previous question of whether the garage was rebuilt in its previous location was yes.

Neubauer closed public comments again.

MOTION: Jondle motioned to approve the Findings of Fact as presented by staff.

Motion: Jondle

Second: Hovick

Voting Aye: Jondle, Hovick, Friend, Neubauer

Voting Nay: Excell

Not Voting: None

Absent: None

Motion passed. (4-1)

MOTION: Hovick made a motion that Story County Board of Adjustment denies the Hocking Setback variance request, as requested by the applicant and put forth in case V25-000001, for a variance of 6 feet from the required front setback of 50 feet to allow the accessory structure to have a setback of 44 feet in the A-1 District.

Motion: Hovick

Second: Friend

Voting Aye: Hovick, Friend, Neubauer, Jondle

Voting Nay: Excell

Not Voting: None

Absent: None

Motion passed. (4-1)

OTHER BUSINESS:

Overview of the Organizational Strategic Plan Fiscal Years 2024-2029 - Crystal Davis

Davis presented the overview of the Organizational Strategic Plan for fiscal years 2024-2029.

ADDITIONAL ITEM(S)

None

BOARD COMMENTS

None.

STAFF COMMENTS

Harter informed the Board that there are several developments happening at the State House that could impact local governments, particularly county governments. She noted that one of these issues pertains to variances, though she believed it is currently just a study bill. She also mentioned that other proposals might necessitate adjustments to County regulations in response to potential reductions in local control.

Harter then announced that the February meeting was the last one conducted via Zoom, and starting with the March meeting, the Board will transition to using Teams. She shared that, so far, the only item on the agenda for the March meeting is the Findings of Fact previously discussed.

Additionally, Harter inquired if the Board could consider moving the June 18th meeting to June 25th, due to the June 19th holiday. She explained that a proposed calendar modification will be brought forward for a decision at the next meeting.

Lastly, Harter suggested that if the March agenda only includes those two items, the meeting could be held entirely via Teams, and Board members would not be required to attend in person.

Neubauer said that at some point there were a number of board members that needed to attend in person to have quorum.

Harter clarified that they could all attend remotely now and it would count for quorum.

Hovick explained that had changed in July 2024.

Harter then shared that Andrea Wagner would be leaving Story County and that that was her last meeting. Harter thanked Wagner on behalf of County staff for the magnificent work she did during her time at Story County.

Board members said she would be missed and thanked her.

ADJOURNMENT

MOTION: Jondle moved to adjourn the meeting.

Motion: Jondle

Second: Hovick

Voting Aye: All

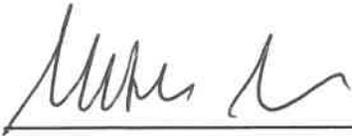
Voting Nay: None

Not Voting: None

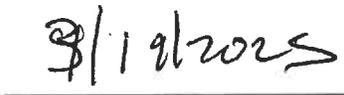
Absent: None

Motion passed. MCU.

ADJOURNMENT: 5:00 PM



Approval of Minutes



Title and Date