

BOARD OF ADJUSTMENT MEETING MINUTES

BOA_AF_07-25-2018

Chairperson Cunningham called to order the July 25, 2018, regularly scheduled meeting of the Board of Adjustment at 5:33 p.m. in the City Council Chambers, West Des Moines City Hall, located at 4200 Mills Civic Parkway, in West Des Moines, Iowa.

Roll Call: Blaser, Celsi, Christiansen, Cunningham, Pfannkuch.....Present

Item 1 – Consent Agenda

Item 1a – Minutes of July 11, 2018

Moved by Board Member Pfannkuch; seconded by Board Member Celsi, to approve the July 11, 2018 meeting minutes.

Vote: Blaser, Celsi, Christiansen, Cunningham, Pfannkuch.....Yes
Motion carried.

Item 2 – Old Business

There were no Old Business items reported.

Item 3 – Public Hearings

Item 3a – Houston Variance, 501 Grand Oaks Drive – Vary the side yard setback for an accessory structure from 20 feet to 6 feet for the construction of a 2,647 square foot carriage house – Dan Houston - VAR-003960-2018 (Deferred from July 11, 2018)

Chairperson Cunningham opened the public hearing and asked the Recording Secretary to state when the public hearing notice was published. The Recording Secretary indicated that the notice was published on June 29, 2018, in the Des Moines Register.

Chairperson Cunningham then asked for a motion to accept and make a part of the record all testimony and all other documents received at this public hearing.

Moved by Board Member Christiansen, seconded by Board Member Pfannkuch, the Board of Adjustment accepted and made a part of the record all testimony and documents received at this public hearing.

Vote: Blaser, Celsi, Christiansen, Cunningham, Pfannkuch.....Yes
Motion carried.

Chairperson Cunningham stated that his Law Firm represents the applicant’s company however he personally does no work for Principal, and he did not see a need to recuse himself unless the Board members or staff requested. There was not request for his recusal.

Michael Wahlert, Bishop Engineering Co, 3501 104th St, Urbandale, said he was representing the owner, and presented a site plan detailing the location of the existing house and adjacent neighbor’s house on the side of the property where the setback was in question. He noted that the trees were marked in exact location per survey. He informed the Board that these are 100 year old oak trees, with root balls the size of the canopy. Building 25 feet from the tree trunk was optimal. The applicant had the proposed house staked in several locations. In a Residential Estate district, setbacks require 20 feet from other buildings. On the Houston property, distance was 36 feet from

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another building, 85 feet from the house. Allowing the variance setback to be 6 feet would allow 18 ft from the nearest tree. He added that there is a forested area with a large drainage creek in the back owned by City. He noted grading in order to locate the carriage house on other portions of the site would require installation of a retaining wall or removal of forested areas.

Dan Houston, 301 Grand Oaks Drive, stated he had looked at a number of orientations for the carriage house on the property. He noted his family has lived at this property for 15 years, and were residents of West Des Moines for 27 years. He added that he would rather not move just to accommodate the carriage house. The house is being built to house vintage cars; also to host not-for-profit events. He is submitting the variance request for purposes of access for these vehicles and a wish to maintain the 100 year old trees from an environmental aspect.

Board Member Christiansen noted that a previous applicant had resolved a similar situation by acquiring a section of property from the neighbor to get away from variance. He asked Mr. Houston if he had discussed this possibility with the neighbor. Mr. Houston responded that they had discussed that option. The neighbor has a set of trees along the property line which provides a natural barrier of screening. Mr. Houston said that if he bought part of the neighbor's property, the neighbor would lose those trees and he believes they would rather keep them. Dr. Andreason, and his wife, were very supportive of this project as the tree line mitigated the view. The tree line is what causes them to support the variance rather than selling off a 20 ft strip of his property.

Board Member Blaser stated that hypothetically, if you moved the proposed house 20 feet, would that affect more than one tree? Engineer Wahlert affirmed that several would be affected, and pointed them out on the site plan, adding that building 18 feet from any tree is pushing it. Moving it back will affect largest tree, the next tree, and a cluster nearby. Moving to the setback line positions the carriage house on a curve from primary home.

Chairperson Cunningham noted that in the staff report there are descriptions of lot characteristics, including a comment about changes of topography of this lot not typical of other lots in the area. He asked the Engineer to respond to that. Engineer Wahlert stated there is a 15% steep grade, with water runoff. It is preferred to have a 2% grade for any type of grassed areas; adding that there is a grade of 3-4% in another part of the lot. Chairperson Cunningham questioned how that compares to lots on either side. Engineer Wahlert responded that the lot to the east shares the same grade to the forest line. The other lot is several feet lower than the forest floor; it is undesirable to grade these out for a brand new development and he wasn't sure if they would be allowed to do a 15% grade. It would be unbuildable on the SW side of the house.

Board Member Blaser clarified that the steep grade didn't really affect placement of the house. Engineer Wahlert responded that it forces the placement to the specific part of the lot where there isn't a grade issue. Locating the site where the slope was gentler would allow placement of swale around the house to manage stormwater.

Chairperson Cunningham asked if there was anything unique about this sitting on a cul-de-sac. Engineer Wahlert stated there was not.

Board Member Christiansen inserted that the applicant needs to prove to the Board that there is a hardship, not necessarily economics. He asked if was it fair to say there is some drainage from another property that's sheeting into the residence. Engineer Wahlert indicated there was not. Mr. Houston observed that the front end of the property is the narrow part of the pie-shaped lot creating significant limitations; it pushes the house location into the back of the property. Engineer Wahlert said that those frontages could hinder any kind of land purchases, if there was to be a 14ft purchase off the line instead of creating some type of flag parcel, it would be appropriate to run it to the street, which frontage may not adhere for the lot for Residential Estate bulk regulations.

Board Member Pfannkuch asked if the house location is the furthest possible from the neighbor. Mr. Houston affirmed that it is. He added that turning the house to face north to south would give the neighbor a much larger profile, and would not be conducive to the neighbor.

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Chairperson Cunningham followed up regarding the grade issues that were discussed, asking whether they required the applicant to place the carriage house in the proposed location; and if it were not for those grade issues would the applicant want it somewhere else. Engineer Wahlert stated that from an Engineering perspective, this is the only location where to place the house.

Board Member Christiansen stated that the Board was trying to find basis to approve that doesn't just say the applicant bought the lot in this condition, adding that variances don't necessarily apply to protecting trees. The Board would need some type of other language regarding the setbacks.

There was a brief discussion about Staff findings and the applicant was given time to review the Staff report and told the Chair could invite the applicant back to the podium for further questioning.

Chairperson Cunningham then asked for questions or comments from the audience.

City Attorney Richard Scieszinski addressed the Board, stating he was asked to come specifically on behalf of Mayor Gaer, and for a lesser extent, the City Administrator. He informed that he is trying to figure out the goal of this variance and what detriment it would be to the property owner. The goal is to prohibit a detrimental effect on the neighbor, and the neighbor seems to say the location of the carriage house is ok. To say he needs to remove these beautiful trees is not commonsensical. They will provide screening. It's the position of the City that we have no real objection. In 2003, prior to this 20 foot variance there was an allowance of 5 feet and at that time it was changed because we felt the proportions of the building to the property needed to be such that, but given a large lot. This is a 1.9 acre lot, but as Mr. Houston and his engineer pointed out, it's not all buildable. It only makes sense that this is the proper place for it with no detriment to the property owner next door. It makes sense as far as the placement and you won't be removing trees that are screening the neighbor. Trees aren't always a consideration with a variance, but to take out 4 or 5 beautiful oak trees to accommodate the neighbor who doesn't seem to have a problem with it doesn't seem really necessary or fit the purpose of the variance. For those reasons on behalf of the City Administration and Mayor Gaer, we'd like to express support for the variance.

Board Member Pfannkuch stated that this leads to a discussion begun two weeks ago in which the Board agreed that there are major and minor changes, and things are brought to the Board which they would like to approve, but some people don't want to set precedence either. I think this is an exact case of that and we asked for some help on that two weeks ago. As a developer I understand what you're saying and I would want this approved for me.

City Attorney Scieszinski commented that to maximize use of the property versus what's actually feasible to do out there, this is the only thing that makes sense. This is a good reason to grant a variance. This is an equitable Board in which you apply specific facts to specific circumstances although the technical language of a hardship might have been created that the placement without maximizing the use of the property, you're not going to be able to build this carriage house without major destruction. It's really is not very commonsensical. It's not a legal application but it is an equitable one, that's why we ask for the variance to be granted.

Board Member Christiansen stated that he thought this is a great variance, but he's looking for help for the language for future petitioners. He summarized Mr. Scieszinski's comments as saying the hardships aren't necessarily composed by external components to this property, but what may happen to the property to try to accommodate the carriage house would be worse than if the Board didn't grant the variance.

City Attorney Scieszinski agreed that with the proportion of the building to the lot, which is not a 1.9 acre buildable lot, there are limits to where you can place it. He affirmed that it is an equitable argument to say, what value the 100 year old trees have if no one is complaining about that. The true reason for the setback requirement is to make sure that the neighbors are not adversely or detrimentally affected. There is no detriment to the neighbor, whereas removing the trees would be more detrimental to the neighbor, It doesn't seem sensible to say you can't maximize

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the use of your property, or if you do it's going to totally destroy the character of this particular property.

Board Member Christiansen mentioned an event center on the Stein Property, asking the proximity of the barn to an adjacent property. Mr. Scieszinski replied that it's a 40 acre parcel, and it's a long way from the neighbor.

Chairperson Cunningham stated that the Board has taken the unbuildable nature of a property into account, at least down in the Valley Junction area, which is not similar to Grand Oaks Drive but the principal is the same. In Valley Junction the properties were plotted before the ordinances. In this instance it looks like you've got a very large lot, most of which is undevelopable. I have a lot of sympathy for the applicant, in that I have something similar.

Board Member Blaser commented that he's been on Board for six years and has never had the City come in and provide commentary on a variance request. City Attorney Scieszinski responded that Mayor Gaer has expressed interest. There hasn't been conversation among the City Council as far as he is aware, and he wasn't here representing the City Council. Mayor Gaer suggested that coming himself to the meeting, but Mr. Scieszinski thought it might be better to address the Board himself. He added that he also spoke with the City Manager's office and they've expressed support for this. This is unusual for the City to actually represent somewhat counter to the staff recommendation but it goes to this particular situation and the lack of detriment to what we're trying to achieve here, and that's to protect the neighbors.

Board Member Blaser offered that the Board struggled with a request recently for a variance of 7 feet to add another garage on a house. The Board pushed staff pretty hard to determine if this was a unique circumstance and they couldn't support that. That makes this decision harder.

City Attorney Scieszinski stated that there was an update on the staff report that given the neighbors position, this could have been built 15 years ago; but now with the large size of these properties and the location of those appurtenant structures in relation to the property itself, this is a little bit different. This is an equity Board. It makes sense from the position of the Mayor as well as City Administration. I think this would be a valid variance. We did this a year ago in Valley Junction with the house, it was commonsensical to do that as much as it was difficult to find a reason because that lot was platted beforehand but when the person bought the lot, they did realize what they were buying and the size of house they were trying to put on there. Some things just don't always fit into a square hole.

Board Member Christiansen and Board Member Blaser conferred briefly to determine which previous case that involved. Board Member Blaser added that he understands staff comments, but that he felt the issue was another finding which had not been discussed yet.

Mick DePhillips, 14422 Oakwood Drive, Urbandale, stated he was a custom home builder and built the original house at 501 Grand Oaks drive as well as five other houses on the old Wright Tree Farm. He informed that Mrs. Wright and her son planned where each house would be located on the tree farm, because she wouldn't let the builder take down trees to fit a custom home on a lot. Wanted you to know that they couldn't do just what the City setbacks were, they had to follow her instructions regarding the trees.

Chairperson Cunningham closed the Public Hearing and asked staff for comments.

Planner Munford informed that Attorney Scieszinski represented the City's position, and the Board was provided with the Staff report. He asked if there were any questions.

Board Member Blaser asked if the Staff had changed positions on Item 2 of the Staff Report, and whether the Mayor and City Manager's position changed this.

Director Lynne Twedt responded that some of the information presented tonight changed her mind on this – the

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fact that they did try to reposition the house, that the slope pushes this up in the corner, for a variety of reasons, and the neighbor wants the short end of the house facing them. She noted that with the City Comprehensive Plan, we want trees being conserved. She noted that the Board has granted variances before where the applicant didn't want to remove trees. She referred to the setback research, adding that if it wasn't for neighbors complaining, we would only have five foot setbacks in this district; if it weren't for neighbor's complaining we never would have changed this code. She concluded that this neighbor is not complaining.

Chairperson Cunningham asked if Director Twedt had any concern about a precedent being set based on neighbor's consent versus no consent.

Director Twedt pointed to this justification that we don't want to see these trees cleared as being the strongest argument, over the lack of complaint from the neighbor.

Board Member Christiansen asked about a time frame where we can have these conditions and findings redrafted by the City or if it was ok to decide based on verbal interpretation received from staff tonight. Director Twedt replied that if the Board wanted to approve based on conserving the trees, staff can draft the language following the meeting.

Chairperson Cunningham asserted that the Board would need findings apropos to the granting of the variance; and he didn't believe it was sufficient based on what's in the findings now. He didn't think that would delay the Board from voting. He asked if there was anything further from staff.

Director Twedt added that she didn't consider this is a typically wooded lot but rather a massively wooded lot. She stated she could adjust the language, noting it's an atypical lot in the main core of the City.

Board Member Pfannkuch asked that the section about mature trees be included in the language as one of their unique considerations.

Board Member Celsi stated that the Board has always been a little bit cautious about making these decisions; with City regulations and City staff, what would they need us for? We're people with common sense and brains that can make variances if we choose to. That's why we're here. I don't have a problem with precedent setting at all.

Board Member Christiansen referred to a variance for a property on 4th Street, where the neighbor did agree to that and the Board granted it.

Chairperson Cunningham agreed, noting that he hadn't been speaking to precedent for precedence sake; our job is to do both individual and relative justice.

Board Member Celsi stated that in this situation trees did make a difference to her, notwithstanding what we've done in any other situation, that's what we are to do, look at a situation and see what makes sense. In this particular situation, this makes sense.

Board Member Blaser expressed concern that the Board has had other applicants which he felt should have received a variance because the hardship was pretty minor and the neighbors were approving of it, and staff was not prepared to go along with that. He affirmed that this is a great project, but the applicant made a decision to build a carriage house of this size. If he had made it a smaller carriage house, he wouldn't have the tree problem. He noted that he is a little concerned about precedence setting.

Board Member Pfannkuch moved to approve the variance subject to staff changing language of item two.

Moved by Board Member Pfannkuch, seconded by Board Member Celsi, the Board of Adjustment adopted a resolution to approve a variance to vary the side yard setback from 20 feet to 6 feet for accessory structure, subject

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to meeting all City Code requirements and regulations. The Board directed Staff to draft findings based on the item discussion and will ratify their findings at the August 8, 2018 Board of Adjustment meeting.

Vote: Celsi, Christiansen, Cunningham, Pfannkuch.....Yes
Blaser.....Abstained

Motion carried.

Item 4 – New Business

There were no New Business items presented.

Item 5 – Staff Reports

a. Next Board of Adjustment meeting scheduled for August 8, 2018

Item 6 – Adjournment

Chairperson Cunningham asked for a motion to adjourn the meeting.
Moved by Board Member Blaser, seconded by Board Member Christiansen, the Board of Adjustment meeting adjourned.

Vote: Blaser, Celsi, Christiansen, Cunningham, Pfannkuch.....Yes
Motion carried.

The meeting adjourned at 6:14 p.m.

Thomas M. Cunningham, Chairperson
Board of Adjustment

Recording Secretary