

**Scott County Zoning Board of Adjustment**  
**June 28, 2006**  
**1<sup>st</sup> Floor Board Room Administration Center**

Members Present: Dittmer, Hittle, Jenkins, Schiebe, Vollbeer

Members Absent: None

Staff Present: Huey and Maddox

Others Present: 16 Others

1. **Call to order.** Chairman Dittmer called the meeting to order at 4:00 p.m.
2. **Minutes-** Schiebe motioned to approve the minutes of the March 22, 2006 and May 24, 2006 meetings. Vollbeer seconded the motion. Vote: All Ayes (3-0).
3. **Public Hearing-Variance(Tabled May 24, 2006)-**Cory Siem and Lissa Kutcher, Section 23, Princeton Township

Dittmer read notice of public hearing, He then asked for staff's review. Huey showed air photos of the property in question and the neighboring property. He showed the distance from the accessory building in question to the neighbor's lot line, and how it is shorter than what the code requires. He also stated that the building was erected without a permit from the county. Huey said the city stated they did not require a permit for the building, but the county did. Huey explained the difference between a public and private stable. A public stable is where there are horses and riders that are either trained or boarded not belonging to the residents. A private stable entails horses and/or riders that own the property and use it for their own private benefit. A public stable must be 660 ft away from the nearest neighbor's residence, business, or farming operation. Also the accessory building in question is not 50 ft from the nearest neighbor's lot. Huey explained that in this case there is a need for two variances, one for the public stable being closer than 660 ft, and one for the accessory building closer than 50 ft to the nearest neighbor's property. He also stated that the neighbors have reached conditions that would be agreeable, but that is not preferred by the applicant.

Dittmer asked if the applicant would like to speak.

Lissa Kutcher of 28157 283<sup>rd</sup> Avenue approached the podium. She stated that the property has historically been used for horses. She and her family were just trying to upgrade the farm. They tore down the corn crib and constructed this building. She asked that the board consider the variance because she uses the money to put herself through

school. Dean Siem of 28005 280<sup>th</sup> St approached the podium. He said he once owned the land now currently occupied by Cory Siem and Lissa Kutcher. He doesn't understand a letter sent out by Huey which stated that the public stable would be a detriment to the health, safety, and welfare of the neighbors. Mrs. Dean Siem 28005 280<sup>th</sup> St. approached the podium. She stated that her child with leukemia finds great pleasure in watching horses there and that he one day might be buried there. Nancy Ruck 1411 Wisconsin St. approached the podium. She is the aunt of the applicant and she sees how happy they are training and riding horses. Kimberly Milch 4858 Blackhawk Trail Bettendorf approached the podium. She stated that the applicants have helped many people through horse training. She would like to emphasize that this is not a boarding facility, and that there are no more than 16 horses there at any given time. Candy Shank 5233 Crow Creek Rd Bettendorf approached the podium. She said that the applicants have made improvements to the property. Brain Plum Hillsdale IL approached the podium. He stated that his daughter and her horse have taken instruction from the applicants. His daughter not only learns riding skills, but life skills as well. He made the argument that if they are capable of raising pigs, why shouldn't they be able to raise horses?

Dittmer asked for staff's recommendation. Huey stated that there is a differentiation between livestock and horses in the zoning code. Also the terms of livability for the neighbors may be impacted. He cannot point to any hardship that would be created by the denial of the variance. The only people who would be affected are the neighbors, and they have reached an agreement with the applicant. With that being said he recommends denial of both of the variances.

Dittmer asked if there was any further discussion after hearing staff's recommendation.

Tom Shirman, Eldridge (attorney for the applicant) approached the podium. He made the argument that this is an innate piece of property. It is isolated and is different from many of the other properties in the vicinity. Lissa Kutcher re-approached. She said she has talked to many stable owners and she cannot find the difference between a public and a private stable.

Schiebe asked what is the difference between the public and private stable setbacks. Huey explained using the aerial and zoning code. Vollbeer asked what buildings are new and what buildings are old? Dean Siem showed her where and what each building was on the aerial map. Dittmer asked about the old corn crib. It was discussed that the new building is where the old corn crib used to be and some of the foundation may or may not have been used in the construction of the accessory building. Jenkins asked if the building was used for riding. Lissa Kutcher answered the building was mainly used for hay storage but in bad weather it was used for exercising the horses. Vollbeer asked where the nearest farmstead was from the property. Huey replied 800 ft.

Joe Ferris 28179 283<sup>rd</sup> Ave. approached the podium. She stated that the applicant and she are cousins. And they had come to an agreement earlier. She is concerned what might happen to the property if this variance is sold and the applicant moves. She asked if the variance could go with the property owners. She would like to see the stable be private and not open to the public for lessons. Lissa Kutcher said how would she earn money for school if she couldn't train horses?

Dittmer asked if Lissa Kutcher had a business permit. Kutcher answered no, but she files the income from the horse training on her taxes.

With that, Dittmer closed the public discussion.

The board discussed if there would be any hardship created, the shape of the property, and what were the setbacks adequate. Also, the Board discussed, at length, the process that the applicant would have to go through to continue horse training. They specifically talked about the Special Use Permit that would be required if these variances are approved. The Board discussed conditions that might come along with the permit.

Jenkins made a motion to approve both of the variances. Hittle seconded.

Vote: All Ayes (5-0). The variances are approved.

4. **Public Hearing-Appeal of Interpretation**-LuAnn Baetke, Section 6, Lincoln Township

Dittmer read the public hearing notice and asked Huey to review the case.

Huey stated that in 2004 he signed a plat of survey to split the property. It was thought that a house was going to be built on this property and act as a farmstead. The adjoining 320 acres was to be there farmland. Since then, the couple has decided to divorce and the 320 acres was sold. Part of the 320 went to the purposed Lost Grove Lake. The original permit application was denied because no development right existed because it is linked to the farmland adjoining it. Since no farm income has been derived, recently, her AG exemption was lost. An Ag exemption would only cover a farmstead and buildings that are for farm use. Since the land is only 1.3 acres, it is thought that no agriculture can be partaken on this property. Therefore it would be a residential property not an agricultural property.

Dittmer asked if the applicant would like to speak.

Steve Shock, attorney for the applicant approached the podium. He was not involved with the divorce proceedings. He stated that it is really an issue of timing. If the house had been built directly after the split, she would have qualified for the exemption. He also stated that the divorce was the main reason for such a delay. It has been going on since 2002. He handed out a case brief that showed the 51% income test does not apply. He feels that she is still in agricultural exempt status. The intent in the divorce was to still be involved in agriculture. She intends to farm once moved onto the sight, on a limited basis. LuAnn Baetke (applicant) approached the podium. She stated that she shouldn't be punished because her husband was not willing to cooperate with divorce proceedings. With this property she would establish a small cattle operation and have a few pigs.

Dittmer asked if the public had any comments.

Mark Jensen of 18010 150<sup>th</sup> St. approached the podium. He is opposed to the building of a residence on this property because he moved out in the county to get away from the city. He doesn't want to see more residences pop up.

Dittmer asked him when he moved out into the area. He replied in August 2004.

Dittmer then asked for staff's recommendation. Huey stated that in order to receive an agricultural exemption you have to derive farm income, have approximately 40 acres, and be primarily adapted for agricultural purposes. Since the land in question is only 1.3 acres, it is not suitable for agriculture. He also stated that he is not comfortable in setting a precedent where a non-agriculture residence is built on agriculturally zoned land. Staff recommends upholding the current interpretation of the zoning code.

Dittmer asked if the applicant had a response.

Steve Schalk said that no precedent would be set because the applicant has always been involved in farming. She has been doing it for over 20 years. Also the area is already urbanized. It is close to Eldridge and has a duplex right across the street.

The Board asked if this is considered a second split. Huey responded no because the first split was before 1981 and therefore receives grandfather status. The applicant's attorney stated that the property was classified as residential by the County's Assessors Office. Huey explained that their classification system is different from zoning classifications. The Board asked if there were any more options. Huey replied the only options were to either uphold the current definition or grant a different interpretation.

With that, Dittmer closed the public forum.

The Board discussed the space and the agricultural suitability of the parcel. If it would be sold to someone else, the parcel would not fit in with the uses around it. The zoning code as it applies to retired farmers was also discussed. The Board talked about what the definition of a retired farmer was.

Schiebe made a motion to uphold the current definition (deny the request). Jenkins seconded the motion.

Vote: 2 Ayes, 3 Nays (2-3) motion fails

Vollbeer made a motion to determine the applicant qualified for an agricultural exemption on the basis that she could be considered retired from farming and the proposed would be built on land she formerly farmed. Hittle seconded the motion.

Vote: 3 ayes, 2 nays (3-2) motion is carried

##### 5. **Public Hearing-Variance**-Kris Clark, Section 17, Buffalo Township

Dittmer read notice of public hearing, and then asked Huey to review the case.

Huey started off by saying that this has been a common variance request in the past. The applicant would like to put an accessory building on the property before the residence is started. Huey showed the plat and aerial photos. He stated that letters have been sent notifying adjacent property owners regarding the variance. Huey said this kind of variance usually comes with a finite period to start building the residence. He said in the past there have been people whom did not comply with the construction period. In those cases the county must take the party to court and have the building removed from the property. Also, the subdivision is full and no more parcels of land can be split off.

Dittmer asked if the applicant has any comments.

Kris Clark W 63<sup>rd</sup> St. Davenport (applicant) approached the podium. He stated that he has lots of money invested into the property already including but not limited to an engineered bridge. He is concerned that his equipment won't be safe when left alone in the open. He wants to build this accessory building so he can lock up his equipment. Right now he is hauling the equipment back and forth from his current residence. He needs this equipment to further improve the site.

Dittmer asked if the public had any comments. Seeing no one, he closed the floor. He then asked for staff's recommendation. Huey stated he had no objection to the accessory building as long as the residence is built within 2 years of the variance being approved. He also noted the accessory building cannot be used for commercial purposes. Huey recommends approval.

Dittmer asked if the applicant had a response. Applicant had no response.

The Board asked whether the building met setbacks and was behind the house. Huey answered that the building was 800 ft from the front of the lot, and the building was behind the house.

Dittmer closed the floor to the public.

Schiebe made a motion to approve with the stipulation that the residence be constructed within 2 years of the approval of the variance. Dittmer seconded.

Vote: All ayes (5-0)

Meeting adjourned at 5:42 p.m.