



Scott County Board of Adjustment

March 27, 2013

1st Floor Board Room Administrative Center

Members Present: Hittle, Gallin, Vollbeer, Scheibe, Dittmer

Members Absent: None

Staff Present: Timothy Huey, Brian McDonough

Others Present: Travis Maas (applicant)

1. **Call to order.** Chairman Scheibe called the meeting to order at 4:05 p.m.
2. **Election of 2013 Officers** – Discussion took place regarding the election of 2013 officers. This action had not yet taken place, because there had yet to be a meeting in 2013 where all members were present to discuss the matter. No one believed a new Chairman or Vice-Chairman was necessary. **Gallin made a motion to re-elect Myron Scheibe as Chairman and Tom Dittmer as Vice Chairman of the Scott County Zoning Board of Adjustment. The motion was seconded by Hittle. All Ayes (5-0).**
3. **Minutes** – Gallin made a motion to approve the February 27, 2013 minutes. Hittle seconded the motion. All Ayes (5-0)
4. **Public Hearing – Variance** – Travis Maas of 11600 97th Avenue, Section 15 of Buffalo Township

Assistant Planner Brian McDonough presented staff's review of the case. He explained that the applicant was asking for a variance from the rear yard setback requirement in a Single-Family Residential (R-1) Zoning District. Mr. Maas proposes building a new home on his property thirty-three (33) feet from the rear property line. The Scott County Zoning Ordinance requires a rear yard setback of forty (40) in an R-1 District. The applicant presently lives in an existing house on the property, and because it is his family's primary residence, he would like to demolish the existing house after the new one is complete. Mr. McDonough explained that this is not an unusual request. Even though the Zoning Ordinance does not allow two (2) principal residences on the same lot, the Planning and Development Department will issue a building permit with the condition that the existing home is demolished within 30 days of the issuance of a certificate of occupancy for the new home. Mr. McDonough showed the plot plan submitted by the applicant, which showed both the existing home, and the proposed site of the new home with a reduced rear yard setback of seven (7) feet.

Mr. McDonough explained the history of the property that Travis Maas owns in the Buffalo Heights subdivision and how the legal descriptions of his property affect this case. Mr. Maas owns three separate parcels which are all adjacent to one another (Lots 5, 6, and 7 of Buffalo Heights Second Annex). He took ownership of these three lots in 2005. The existing house and detached garage are completely contained on Lot 5, and a newer pole building sits on Lot 7 and part of Lot 6. Mr. McDonough explained that a building permit was obtained by the applicant in 2005, at approximately the same time he assumed ownership of this property, for the pole building. However, records indicate that only a footing inspection was completed. A letter was sent to the Mr. Maas, after one year's time following the issuance of the permit, indicating that he needed to either renew his permit and finish construction or the permit would be cancelled. Mr. Maas did not respond to the letter. Upon visiting the property for this variance application, planning staff observed that the pole building appeared to have been finished, and therefore was completed without a proper building permit and accompanying inspections.

Mr. McDonough stated that this information is pertinent to the existing case because the permit for the pole building was issued with the condition that a Restrictive Covenant and Agreement Not to Sever, or severance agreement, be completed in cooperation with the Planning and Development Department before the building would be signed off on for final inspection. Travis Maas owns three adjacent parcels, and all are zoned R-1, however each is a separate and distinct piece of property because they each have a separate legal description. In order to be considered a single, developable parcel the owner of adjacent, but separately described, parcels must sign and record a severance agreement or combine the legal descriptions. In the case of the pole building, the Scott County Zoning Ordinance does not allow accessory buildings to be constructed on a parcel without first having a principal building. In order for the pole building to be considered accessory to the existing house, the department required the filing of a severance agreement to ensure that no one of the three lots could be separately transferred in the future. The permit expired and no severance agreement was ever recorded. Mr. McDonough showed aerial maps of the property to visually explain and reiterate the layout of the property in question.

Mr. McDonough showed site photos taken of the property, including the existing house, detached garage, the pole building, and the proposed site of the new house. Photos were also included which showed the rear property line from which the applicant was seeking the setback variance. Three adjacent properties share that same property line. He explained that these properties were the closest to the applicant's property and were most likely to be affected by this request. The principal residences on all three of these properties are setback over 120 feet from their rear property lines, (shared rear property line with Mr. Maas) and all three have fences. Two have six foot tall wooden privacy fences, and one has a four foot tall chain link fence. These properties receive access from 96th Avenue, one block to the west.

Staff waited until after the public hearing to render its recommendation.

Travis Maas (11600 97th Street): Mr. Maas agreed with the review of his case by staff. He stated that he had no comments, unless the Board had questions for him.

Board member Gallin asked for clarification on the issue of a Restrictive Covenant and Agreement Not to Sever?

Mr. Maas explained that he thought he had filed one previously, but he understands that he needs one going forward for the property.

Tim Huey explained the intent of such an agreement.

Chairman Scheibe asked how the pole barn was constructed without all of the proper inspections and without a severance agreement.

Mr. Huey said that the department's policy is to notify permit holders once their permit has expired, but that they do not necessarily follow-up on each case. Final inspections and certificates of occupancy for new homes, and especially for new homes being sold by a developer, are rigorously applied. However, for a private job such as this pole building, the department generally takes people at their word. Also, such as the case here, oftentimes past mistakes are caught when later work or requests are handled.

Mr. Maas stated he thought all inspections had been completed on the pole building.

The Board asked for staff's recommendation.

Mr. McDonough presented staff's recommendation for approval of this request. The recommendation was based upon the existence of an unnecessary hardship created by an exceptional situation resulting from the following: The small dimensions of the non-conforming lots of record in the Buffalo Heights subdivision, the unusual dimensions of the applicant's property (twice the depth as width), and the need to postpone demolition of an existing structure and preserve the functionality and layout of the overall lot (access to existing driveway and garage). Mr. McDonough explained that the approval was subject to the following three (3) conditions:

1. The applicant, and owner(s) of 11600 97th Avenue (Lots 5, 6, and 7 of Buffalo Heights Second Annex), must sign and record a "Restrictive Covenant and Agreement Not to Sever" in cooperation with the Planning and Development Office which binds all three lots together as one parcel. The document shall be prepared by an attorney licensed with the state of Iowa, contain the attorney's signature as well as the signature of the Scott County Planning and Development Director, be recorded in the Scott County Recorder's Office, and have a recorded copy returned to the Planning and Development Office. This must be completed before the issuance of a building permit.

2. The applicant shall obtain a building permit and comply with all Scott County Building Codes. The applicant shall agree, at the time of issuance, that the old home be demolished with 30 days of the issuance of a certificate of occupancy for the new home.
3. All requirements of the Scott County Health Department shall be met.

Mr. McDonough stated that the applicant had stopped by the office earlier in the week to drop off plans for the new home. At that time, he indicated that he was already working with his attorney to combine the separate property legal descriptions. Mr. Maas also mentioned that he planned to install a new septic system for the new home. Staff advised him to get into contact with the Scott County Health Department regarding their procedures for disposing of his existing system, and designing and placing the new one.

The Board had a brief discussion about the case. There was a general concern that the applicant had failed to follow regulations on his last permit for the pole building back in 2005. However, staff's recommendations appeared to cover those concerns.

Vollbeer made a motion to approve a variance, in accordance with staff's recommendations, of seven (7) feet to allow a new home, approximately 1,600 square feet in size, to be constructed within a required rear yard setback area on property described as: 11600 97th Avenue, also known as Lot 5, 6, and 7 of Buffalo Heights Second Annex, due to an unnecessary hardship resulting from exceptional circumstances related to lot dimensions and shape as well as the need to postpone demolition of an existing principal residence. Gallin seconded the motion.

Vote: All Ayes (5-0)

With no new business to discuss, **Gallin made a motion, seconded by Hittle, to adjourn.** The meeting was adjourned at 4:25 p.m.