

**DALLAS COUNTY
BOARD OF ADJUSTMENT
MINUTES**

The Dallas County Board of Adjustment was called to order on **Tuesday May 14th, 2019** at **4:30 PM** in the Dallas County Board of Supervisors Conference Room at 902 Court in Adel, Iowa by Chairperson Marilyn Gliem. Members Karen Smith, Randy Tennison, and Marilyn Gliem were in attendance. Vice Chair Scott Pope, and member John Baker was absent. Murray McConnell, Director of Planning & Development, Samuel T. Larson, Senior Planner; and Elizabeth Kilson, Office Manager, were also in attendance.

Approve Agenda:

Motion by K. Smith **to approve the agenda as presented. Seconded** by R. Tennison. **Ayes unanimous. Motion carried.**

Approve Minutes of the last meeting of March 25th, 2019:

Motion by R. Tennison **to approve the minutes. Seconded** by K. Smith. **Ayes unanimous. Motion carried.**

Old Business: None

New Business:

Item 1: A petition to consider approval of a Conditional Use Permit to operate an agricultural equipment repair, modification, and sale business (Porter's Ag Solutions) on Parcel # 1313100004, in the W1/2 of the NW1/4 Section 13, T78N, R29W (Union Township), 33224 H Ave, zoned A-1 (Agricultural) for Bryan Porter (Jamie Bergkamp).

J. Bergkamp introduced himself as the attorney for B. Porter, and deferred comment to M. McConnell.

M. McConnell gave a brief background of the business: It's been operating for three years at this location with no complaints. There are two buildings that have been on the property for many years. He confirmed the board had a chance to review the P&Z minutes where a lot of discussion took place about the conditional use permit. M. McConnell advised the board that the Commission recommended approval 5 to 1, with five conditions:

1. Screen outdoor storage from off property view (clarified it was the north side), no additional buildings to be allowed
2. Hours of operation: 6am-9pm
3. Five year time limit
4. Maximum of ten employees
5. Provide adequate turn around for truck traffic

Comments from the Board

K. Smith confirmed the acreage of the lot.

J. Bergkamp advised it was 20.56 acres. There are two machine sheds. He gave additional information about the business and what Mr. Porter does: repairs agricultural equipment, upgrades the technology on corn planters, and sells agricultural equipment that he has repaired.

R. Tennison asked if the business has been operating illegally, historically.

M. McConnell stated that historically the property has been used for various business uses. It was once an Ag Chemical or Ag Science related business. Those are considered agricultural uses. This business is a little difference because remanufacturing, modifying, modernizing of equipment is taking place. The office's concerns are with location, it's a lot in a subdivision; there are residences in the area, so it needs to have limitations put on it. M. McConnell stated that no one wants to see a business fail, but there is a potential it can outgrow the space. The conditions that P&Z recommended are to help with those concerns. The time limit of five years was placed so that the commission and the board of adjustment can revisit the business use and determine if it still fits in the location. The screening of outdoor storage is listed in the ordinance, and since the properties to the north are residential acreages. As for not allowing additional buildings, that is to help prevent locking in the long term commercial uses of the property. Since he has been operating for three years with no

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complaints, that have been filed with the office, and all the conditions placed, the department can recommend approval of the permit.

Comments from Staff

K. Smith confirmed a new septic would be placed.

S. Larson advised yes, but not in the location on the site plan, as it will need to be moved as septic systems cannot be driven over by equipment.

K. Smith asked if anyone knew of a traffic count for the road, as she read concerns from the P&Z meeting.

S. Larson advised that the DOT prepares a study every few years and the last study was 2016, and they advised it 150 trips per day on the road.

R. Tennison spoke concerns about precedence for allowing this permit. If someone establishes a business without following the proper channels, then tries to get the proper permits, and they are denied, then it could be seen as anti-business all because it was not done correctly from the beginning.

M. McConnell advised that he shares the same concerns. Mr. Porter was aware of the situation, and that it would need to be successfully rezoned or obtain a conditional use permit. At some point, any business has the potential to outgrow their space. It seems compatible at this time because the office has received no complaints and it's an agricultural related business.

R. Tennison stated the hours of operation seem like a large window. M. McConnell agreed, and reminded the board that the proposed conditions are just that, proposed, and the board of adjustment has final decision and can modify conditions if they so choose.

M. McConnell addressed J. Bergkamp and asked if the work was seasonal, with peaks and valleys. J. Bergkamp agreed, and that this time of year is very busy. He advised the work is done inside the enclosed buildings. He did advise that Mr. Porter bought the property because it was being sold and it is difficult to move a business on very short notice.

M. McConnell did say that the office runs into situations similar to this often, especially with building without a permit. Generally, the office tries to work with people. Some people believe truly believe they didn't need a permit or proper authorizations; others have the ordinances explained and still do it anyway. In this case, the limits and conditions give incentive to stay within the rules.

K. Smith stated that this business is a service to the community, and being out in the country, she believes he truly may not have known. And with the transition of people buying out in the country, they should also be looking at what is around them and determine what else is going on besides development. M. Gliem agreed.

Motion by K. Smith to **approve, with the conditions placed by the Planning and Zoning Commission, the Conditional Use Permit to operate an agricultural equipment repair, modification, and sale business (Porter's Ag Solutions)** on Parcel # 1313100004, in the W1/2 of the NW1/4 Section 13, T78N, R29W (Union Township), 33224 H Ave, zoned A-1 (Agricultural) **for Bryan Porter (Jamie Bergkamp). Seconded** by R. Tennison. **Ayes unanimous. Motion carried.**

Item 2: A petition to consider a Variance from the 200' setback requirement for a public stable and riding academy on Parcel # 0811300022, Lot 9 of Connolly Estates Subdivision Plat 2, in the NW1/4 of the SW1/4 of Section 11, T80N, R26W (Grant Township), 19674 W Ave, zoned A-1 (Agricultural) **for Andrew Mosman and Margaret Walker-Mosman (Jason Laughlin).**

Petitioner

J. Laughlin introduced himself as the representative of Mosman and Walker-Mossman. He explained the existing building is 100' from the property line. They are looking to have a limited commercial use of the existing building and are seeking a variance from the 200' setback requirement, sited in 45.09.1.J. The purpose of this is for boarding and training of competition level dressage horses. He referenced the letter they

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sent to the neighbors explaining their request. The owners have been using the existing stable for personal use and it currently complies with the 100' setback for personal horses. The buildings were existing upon purchase of the property. Re-platting, moving lot lines, or acquiring additional land to meet the setback is an extreme measure. The literal enforcement of the ordinance would not yield a reasonable return from any use permitted by the regulations of the district in which the land is located. The structures are already set for horses and stabling. "The owner's plight cannot be their own making" – again, the structures were already built. They acquired the property in good faith and planned to use it for personal horses. They, over time, wish to change the use as circumstances change. "The variance will not alter the character of the locality" – Horse breeding and ownership is a permitted use, but the use is only going to change to a limited commercial context. J. Laughlin brought up other commercial horse boarding facilities in the area. Future intended use is similar to what already exists (on a personal ownership level). There will only be ten horses at a time. The neighbor to the north, who is most affected by the variance, has submitted a letter of support. J. Laughlin wanted to note that there is a very limited pool of potential clients, very selective and a small number would even qualify for this type of training. The client is personally involved in the business and day to day on goings.

Comments from the Board

R. Tennison asked if there was a shadow on one side of the building (referencing the areal map of the property). M. McConnell confirmed it was a shadow.

Comments from Public

Paul Outhier introduced himself as a neighbor, and his wife Sarah Outhier. They are concerned because the building is going to be right in the center of the lots. There are 12 lots out there, while zoned agriculture, they are residential in use. S. Outhier advised the covenants expired and their thought was that the county ordinance would safeguard their property from things of this nature. They advised they are okay with the business being located there, but they wish that the ordinance is followed and they are required to adhere to the 200' setback requirement.

R. Tennison wanted to confirm the building is existing, and it's less than 200 feet from property lines. McConnell confirmed this to be true, and the ordinance states stables are an allowed use in the zoning district. The setback is 100' for personal horses, and 200' for horses owned by others.

P. Outhier asked for clarification on the difference between 100' and 200' setback requirements.

M. McConnell advised that the ordinance was written that way for those who had a large commercial operation to have a large piece of land and the people that built this property in question, followed the ordinance and it was their own horses boarded there. When the property was up for sale, the office fielded dozens of calls about what allowed uses would be there.

S. Outhier wanted to be sure their property values were protected, the area is beautiful and the homes in the area are very nice.

J. Laughlin stated that the property has been used to board horses (personal horses) for a long time. The Outhier's stated they moved in in 2004, and horses were on the property at that time. He explained that it would be difficult to know the difference of private or public horses, the use itself does not change, if his clients are the ones caring for the horses.

P. Outhier advised that the increased traffic through the area would be an indicator.

A. Walker-Mosman explained that the horses that would be trained here are not untrained wild horses; they are competition level horses that hope to move on to the next level.

M. McConnell stated that there is a question of whether or not the Mosman's knew of the ordinance when they bought the property. Assuming that they did, it is a self-created hardship.

J. Laughlin responded with knowing and intent are different. They intended to use the property for personal horses and over

M. McConnell advised that intentions change over time, and it still is a self-created hardship.

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R. Tennison asked when the Mosman's purchased the property.

A. Mosman responded with 2016.

K. Smith asked how many horses the Mosman's owned. M. Mosman stated she had four horses and a pony. M. Gliem asked how many horses they planned on boarding. M. Mosman said the max number of horses would be ten, including her own horses. The max number of horses on the property would be ten.

R. Tennison asked if the Outhier's owned or boarded horses. P. Outhier responded they do not.

M. McConnell advised there are other options. They could buy additional property to meet the 200' setback requirement. M. Gliem asked if a portion of the property to the north could be split and sold. M. McConnell answered yes. The property owner to the north owns three lots.

R. Tennison asked if the property owner to the north was the one that spoke positively of the variance. M. McConnell answered yes.

P. Outhier asked if the petition and letters were public record. E. Kilson confirmed they were.

K. Smith asked if a lease option was possible. M. McConnell stated the ordinance does not specifically prohibit people leasing land.

J. Laughlin brought up the interpretation of "ownership" and the neighbor was willing and in favor.

M. McConnell advised that the variance runs with the land, and if approved, what does that bring with the next owner. S. Larson clarified the variance is specifically for the existing building, not all of their lots.

P. Outhier asked for clarification on the "feed lot" wording in the ordinance. M. McConnell discussed it.

R. Tennison addressed the neighbors and asked if they had an opportunity to discuss among themselves and the neighbors, going from nine to ten horses is not a large change. K. Smith, M. Gliem brought up tabling the petition until the Mosman's and the Meston's could speak about possibly getting a lease or an easement for the additional footage.

M. McConnell stated again that the main concern to the board and the county is that the next owner could come in and operate a full riding academy with regular lessons and public boarding, with no maximum number of horses allowed.

R. Tennison asked if a number of horses could be a condition of the variance.

K. Smith asked M. Mosman if any horses were lined up. M. Mosman answered yes.

P. Outhier asked if the business is already operating. M. Mosman said no.

M. McConnell advised he would need to research if dimensional conditions to a variance were allowed, and a conversation with the county attorney would need to take place to confirm if that would be allowable.

R. Tennison stated that the variance should be tabled. K. Smith agreed.

M. McConnell stated that the ordinance does not specifically state how the land is acquired. If they can acquire the additional one hundred feet, a variance would not be required. J. Laughlin restated and confirmed that.

M. McConnell advised J. Laughlin that if the board wanted to table it indefinitely, then he or his client can come back to the office with the solution – an easement or a lease to obtain the additional 100 feet, then a variance would not be required, and the proceedings would be dropped.

M. McConnell wanted to clarify that the indecision was not against the Mosman's personally or their proposed use, it's when the variance is granted, it runs with the land. R. Tennison agreed.

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Motion by R. Tennison to **table a Variance from the 200' setback requirement for a public stable and riding academy** on Parcel # 0811300022, Lot 9 of Connolly Estates Subdivision Plat 2, in the NW1/4 of the SW1/4 of Section 11, T80N, R26W (Grant Township), 19674 W Ave, zoned A-1 (Agricultural) **for Andrew Mosman and Margaret Walker-Mosman (Jason Laughlin)**, until a future date. **Seconded** by K. Smith. **Ayes unanimous. Motion tabled.**

Item 3: A petition to consider a Variance from the rear setback requirement for an accessory building on Parcel # 0215400011, in the N1/2 of the SE1/4 of Section 15, T81N, R28W (Spring Valley Township), 14581 K Ave, zoned A-2 (Agricultural/Floodplain/Conservation) **for Dallas County Conservation Board (Mike Wallace).**

M. McConnell spoke and advised that Mike Wallace was unable to attend the meeting due to the Conservation Board meeting also scheduled for this night. He went on to say that he had a conversation with Jerry Lage, the property owner to the north. They stated they have no issue with the granting of the variance. The layout of this parcel is unique, this is the Forest Park Museum is located here. If they moved the building further back on the parcel, they would have to take land out of the prairie. I have an email from Mr. Lage voicing his support. M. McConnell advised the building is to be used as a maintenance shed for the Forest Park Museum.

K. Smith voiced she had no concerns.

S. Laron did mention that there were other locations on the parcel where a building could be built with no variance, but the amount of land that would need to be removed from prairie is not conducive to the conservation. The building location as proposed is clustered near their maintenance operations, and they already park their maintenance equipment where the proposed building site is located.

R. Tennison had no objections.

Motion by K Smith to **approve a Variance from the rear setback requirement for an accessory building** on Parcel # 0215400011, in the N1/2 of the SE1/4 of Section 15, T81N, R28W (Spring Valley Township), 14581 K Ave, zoned A-2 (Agricultural/Floodplain/Conservation) **for Dallas County Conservation Board (Mike Wallace).****Seconded** by R. Tennison. **Ayes unanimous. Motion carried.**

Adjourn Meeting:

Motion by R. Tennison to **adjourn. Seconded** by K. Smith. **Ayes unanimous. Motion carried.**

Elizabeth Kilson
Office Manager

An audio recording of this meeting is available in the office of Planning and Development