

Dubuque County Zoning Board of Adjustment Minutes of the May 2, 2023 meeting

Chairperson Ben Schroeder called the meeting to order at 7 p.m.

A. ROLL CALL: Members present at the Dubuque County West Campus, 1225 Seippel Road: Ben Schroeder, Loras Link, Dave Klein, Penny Wulfekuhle and Michelle Switzer. Staff Present at the Dubuque County West Campus, 1225 Seippel Road: Tammy Henry and Lindsey Schreiber.

B. APPROVAL OF MINUTES: A motion was made by Mr. Klein, **seconded by Mr. Link and passed unanimously to approve the Minutes of the April 4, 2023 meeting. Vote: 5-0.**

C. PUBLIC HEARINGS:

1. BA#05-11-23 PAUL & ROCHELLE BEYER VARIANCES

The applicants are requesting to build a 24'x 24' detached garage in a R-3, Single Family Residential zoning district. They are requesting to build 20' from the front lot line, they will need a 10' variance to the 30' required and they are requesting to build 12' from the left side lot line, they will need a 3' variance to the 15' required. The property, located along Boleyn Road, is legally described as Lot 20 Boleyn's Sub Section 02, (T89N-R2E), Dubuque Township, Dubuque County, Iowa.

The property is .34 acres with a Single-Family Home. The applicants want to build the detached garage in the front yard of the property due to limited space and the septic system is located in the back yard. The applicants were approved to add a new residential entrance to access the garage with the agreement that they must remove the cement extensions attached to the existing driveway. Twenty-four (24) letters were sent, (22) were delivered and the City of Dubuque was notified. Kelly Bonnette & Kirtland Patters did not pick up their letters. There was one comment regarding this case. Dan Kieffer, 17505 Gondola Dr, Dubuque. is in favor of the variance requests.

Speaking to the board was Paul & Rochelle Beyer, 10146 Boleyn Rd, Dubuque. Mr. Schroeder administered the following Oath asking the participants to raise their hand. "Do you solemnly swear you will tell the truth, the whole truth and nothing but the truth?" They said yes.

Mr. Schroeder asked if they wanted to add anything to his case. Mr. Beyer said no. Ms. Wulfekuhle asked if the new structure would create a blind spot for the next-door neighbor. Ms. Henry said the building did set back far enough however any new structure would change the view. Ms. Wulfekuhle asked if the new building would be used for vehicles and Mr. Beyer said yes. He said the garage that is attached to the home is a basement garage and there is a set of stairs that they must climb to enter the home and because of medical reasons it has become a challenge for them. He said the new garage would be at entry level and eliminate the usage of stairs.

Mr. Link asked if Mr. Beyer was able to keep the water runoff onto their own property and Mr. Beyer said yes.

Mr. Schroeder asked if anyone had questions, and no one spoke.

A motion was made by Ms. Wulfekuhle, **seconded by Ms. Switzer to approve the variance request with the condition that there must be gutters and down spouts that direct the water onto the owner's property. The motion passed unanimously. Vote: 5-0.**

2. BA#05-12-23 CHARLES & LISA WEHRSPANN VARIANCES

The applicants are requesting to build 36'x 50' detached metal pole shed in a R-1, Single Family Residential zoning district. They are requesting to build 13' from the right-side lot line, they will need a 37' variance to the 50' required and they are requesting to build 6' between the house and the proposed shed, they will need a 2' variance to the 8' required. The applicants are also requesting to build 5' taller than the primary structure, they will need a 5' height variance to the 12' required. The property, located along Circle Ridge Road, is legally described as Lot 3 Ridge View Estates No 2 Section 08, (T87N-R2E), Peru Township, Dubuque County, Iowa.

The property is 1.18 acres with a Single-Family Home. The applicants want to build the pole shed in this location because their septic is located in the rear of the property and the existing driveway will provide easier access to the building. The applicants will match the color of the building to the existing home and add gutters. Seven (7) letters were sent, (6) were delivered and the City of Sherrill was notified. James & Barbara Schueller did not pick up their letter. There were no comments regarding this case.

Speaking to the board was Charles & Lisa Wehrspann, 13150 Circle Ridge Rd, Sherrill. Mr. Schroeder administered the following Oath asking the participants to raise their hand. "Do you solemnly swear you will tell the truth, the whole truth and nothing but the truth?" They said yes.

Mr. Schroeder asked if they wanted to add anything to his case. Mr. Wehrspann said they will place gutters on the building that will direct the water flow onto their own property and intends on collecting the rainwater with water barrels for his garden. He said another option is to hook up to the drain tile that is hooked up to the house that runs down to a catch box next to Circle Ridge Rd.

Ms. Switzer asked how the well lines ran since they were on a shared well. Mr. Wehrspann explained that the well serviced 5 homes and the lines ran along Circle Ridge Rd.

Speaking to the board was Al Hindermann, 13164 Circle Ridge Road, Sherrill. Mr. Schroeder administered the following Oath asking the participant to raise his hand. "Do you solemnly swear you will tell the truth, the whole truth and nothing but the truth?" He said yes.

Mr. Hindermann asked if there was a 54' distance between the back of the building and the rear lot line and Ms. Henry said yes. He also asked if the right side of the building would be 13' off the right lot line and Ms. Henry said yes that was the request. Mr. Hindermann asked if Mr. Wehrspann would be accessing the new building with his own driveway. Ms. Henry said yes Mr. Wehrspann would use his existing front entrance for access.

Mr. Wehrspann said he planned to connect the garage to the house but his insurance company suggested not to attach the building because it would cause his insurance rates to increase.

Mr. Schroeder asked if anyone had questions, and no one spoke.

A motion was made by Ms. Wulfekuhle, **seconded by Mr. Klein to approve the variance request with the condition that there must be gutters and down spouts that direct the water onto the owner's property. The motion passed unanimously. Vote: 5-0.**

3. BA#05-13-23

RYAN SINDT

SPECIAL USE PERMIT

The applicant is requesting a Special Use Permit to build a 42' x 45' home addition in a non-conforming A-1, Agricultural zoning district. The property, located along McCarthy Rd, is legally described as Lot 1 McCarthy Road Sub Section 28, (T87N-R1E), Prairie Creek Township, Dubuque County, Iowa.

The property is 6.75 acres with a Single-Family Home, three utility buildings, and one shed. The applicant would like to add value to the home by adding additional living space that will match the color of the existing home. Four (4) letters were sent, (4) were delivered and the City of Bernard was notified. There was one comment regarding this case.

R Land & Cattle, LLC
6955 245th Street
Cascade, IA 52033

April 20, 2023

Dubuque County Zoning
1225 Seippel Rd
Dubuque, IA 52002

To Whom this may concern,

We have been notified that our land is within 500 ft of the proposed Special Use Permit Request, BA#05-13-23 for Ryan Sindt. We have no objections at this time for this request.

Respectfully,

Jake, Justin and Stan Reiter

Speaking to the board was Ryan Sindt, 1544 McCarthy Rd, Bernard. Mr. Schroeder administered the following Oath asking the participant to raise his hand. "Do you solemnly swear you will tell the truth, the whole truth and nothing but the truth?" He said yes.

Mr. Schroeder asked if he had anything to add to his case. Mr. Sindt said he is adding an additional bedroom and bathroom. Mr. Sindt said the home is not visible from the road. Mr. Sindt said he intends on placing gutters and down spouts on the addition.

Mr. Schroeder asked if anyone had questions, and no one spoke.

A motion was made by Ms. Switzer, **seconded by Mr. Schroeder to approve the Special Use Permit request with the condition that there must be gutters and down spouts that direct the water onto the owner's property. The motion passed unanimously. Vote: 5-0.**

4. BA#05-14-23 REISS FAMILY FARM LLC SPECIAL USE PERMIT

The applicants are requesting a Special Use Permit to convert an existing shed to be used as a temporary Single-Family Home for their aging mother in a A-1, Agricultural zoning district. The property, located along Dayton Road, is legally described as SE NE except for Lot 1 SE NE Section 33, (T88N-R3E), Mosalem Township, Dubuque County, Iowa.

The property is 37.63 acres with a Single-Family Home with agricultural buildings. The applicants are requesting the use of an existing ancillary structure that has living quarters to be utilized as a second single family home for Mrs. Janet Reiss. The applicants submitted this request after a complaint had been received in the Zoning office that Mrs. Janet Reiss was no longer living in the primary home. The complaint stated that she was living in a converted ancillary structure, and this would be a second home on one parcel of land. In following up with the complaint the Zoning Administrator worked with Mrs. Janet Reiss' attorney to attempt to find a solution to the violation. The applicants are requesting a Special Use Permit to resolve the problem. The applicants agree the Special Use Permit would terminate upon her death or her decision to discontinue utilizing the property as her primary residence, at which point the sleeping quarters would be removed and the shed would revert to its prior use as a non-residence. The applicants also agree to not rent out or use the primary home on the property while Mrs. Janet Reiss resides in the converted shed. Seven (7) letters were sent, (6) were delivered. Joshua & Jacklyn Freiburger did not pick up their letter. There was one comment regarding this case.

Dear board members,

April 19, 2023

We are writing this letter to have our comments known for the request for a special use permit submitted by the Reiss Family Farm LLC item number BA#05-14-23 that is on the agenda for Tuesday, May 2, 2023.

Myself (Peggy Sindt) and my husband (Tim Sindt) are both in support of this request being granted. This use of the shed doesn't change the appearance of the property or create any type of noise or hazard that we are aware of. This does not affect us or our interests in any way and we think it is needed to accommodate our neighbor, Janet Reiss, in staying on her property and being comfortable at home.

If you have any further questions for us, feel free to contact us by mail, email (pssindt@yahoo.com) or by phone.

Peggy Sindt
563-663-5139 (voicemail)

Tim Sindt
563-663-5138

Speaking to the board was Attorney Peter Arling, O'Connor & Thomas Law Firm & Mark Reiss, 6568 Dayton Rd, Dubuque. Mr. Schroeder administered the following Oath asking the participants to raise their hand. "Do you solemnly swear you will tell the truth, the whole truth and nothing but the truth?" They said yes.

Mr. Schroeder asked if they wanted to add anything to their case.

Mr. Arling said the property has been in the family since 1937. Mr. Arling said that Ms. Reiss was currently residing in the converted shed. Mr. Schroeder asked when the shed was built. Mr. Arling said the shed was built in 1987 and at that time the shed was built with a kitchen area and bathroom. Mr. Arling said there was no sleeping area added when the shed was built.

Mr. Arling said the existing home is in good condition, however, it does not have a bathroom and sleeping area on the first floor. He said the shed was built with the kitchen and bathroom on the 1st floor and an extra room that they converted into a bedroom. He said Ms. Reiss has been living in the converted shed comfortably for the past few years. He said the shed is heated and cooled.

Mr. Arling said when the home and shed were built, they were built with septic holding tanks. He said Mr. Reiss had the perc test done and passed the test so he is working with a contractor to bring the septic system back up to compliance with the current rules. He said the septic system will serve both the shed and home.

Mr. Arling thinks the complaint was driven by a recent case that had created some bad blood between neighbors. Mr. Arling said he did not know who submitted the confidential complaint, but this was how the issue of having two homes on a single parcel was brought to the zoning offices' attention.

Mr. Arling said he has been working with Ms. Henry to find a solution to the violation. He said a solution to the problem is to apply for the Special Use Permit. He said the Special Use permit would allow for the use of a second home on the property and they could rent out the first dwelling, however, that was not what Ms. Reiss wanted to do. He said all they are looking to do is to allow Ms. Reiss to live in the second dwelling comfortably for the remaining years of her life on the farm. Mr. Arling said they could place a condition on the Special Use permit that if Ms. Reiss could no longer live on the property whether it is by choice or death, then the Special Use permit would no longer be valid and they would remove the living quarters in the shed.

Mr. Arling said by doing a Special Use Permit with conditional use that it is only for the use of Ms. Reiss, and this would benefit the board for a couple of reasons. One being it doesn't change the complexion of the neighborhood. Secondly, it doesn't create a permit dwelling on the property. He said it is a temporary use for only Ms. Reiss to continue to live on her property. Mr. Arling said another option would be to subdivide the property

since there is enough land, however, he believes this would degrade agricultural property within the county. He said the family wants to keep their property as a large farm.

Mr. Arling said the family is not currently using the existing home however, they are still maintaining the home and farm. He said by not granting the Special Use Permit would force them to plat the property or connect the existing home and shed together. Mr. Arling said he thought this was a waste of resources.

Mr. Arling said they will agree to and did suggest placing a condition on the decision that they can't rent out the home. He said the family has never intended to rent out the existing farm home.

Mr. Arling said granting this Special Use Permit would set great precedence for the board to make this work for an elderly resident because the situation is not affecting the surrounding area.

Mr. Link asked Ms. Henry what the difference was between this case and placing a mobile home on a property? Ms. Henry said because this is a permanent structure. Ms. Henry said this was a violation and no building or septic permits were issued. Ms. Henry said having 2 homes on a farm is a controversial issue for the Zoning Board.

Ms. Henry said the family has said they will convert the second home back to a shed once Ms. Reiss vacates the property. She said the board would have to create a condition to bring the case back to the board for review. Mr. Arling said that there was discussion regarding setting up an annual certification for the Special Use Permit.

Mr. Arling said connecting the home and shed would cost Ms. Reiss thousands of dollars and she is living on a fixed income.

Mr. Arling said that the Special Use Permit would allow for a second home on a farm. Ms. Henry said the Special Use Permit would allow for a second home on the farm if it was used for farming purposes. Mr. Arling said if you read the zoning ordinance it says additional units on a farm shall be considered as residential use and requires a Special Use Permit and it does not specifically say for farming use only.

Mr. Arling said he thinks the board should allow an elderly person to move into a smaller home on their property and rent out the original home just like the City of Dubuque currently allows. He said it would be a complete injustice for the people who have lived on these properties forever.

Ms. Wulfekuhle asked why they did not add a bathroom and bedroom to the main level of the existing farm home? Mr. Arling said it would have cost too much money for Ms. Reiss to add a bathroom on the main level.

Ms. Switzer made the comment that Ms. Reiss converted the shop before asking any questions about the rules. Mr. Arling said he understood that and that's why they were asking for forgiveness and permission. He said there's no harm, no foul. Ms. Wulfekuhle said this could have a ripple effect on other citizens asking for the same permission. Mr. Schroeder said he feels like the board would be setting such a large precedence with this case. Ms. Henry said agricultural land was being rented out. Mr. Arling said if the

Special Use Permit is denied then the only other option is to plat the property into 2 forty-acre pieces. He said this would then allow for 2 family homes with no questions asked. He said the Reiss family is trying to conserve the agricultural ground by keeping it as one large parcel.

Ms. Switzer asked if Ms. Reiss just moved back into the family farm, would she have to redo the septic system? Mr. Arling said no but if the septic system was going to service both the home and the shed it would have to be replaced. Ms. Switzer asked what the cost of the septic would be, and Mr. Arling said they had not received the bid back from the contractor.

Ms. Wulfekuhle asked Ms. Henry what the fees would be if the Special Use Permit was approved. Ms. Henry said they would have the fees for the new septic and septic permit. She said the state building code rules have recently changed for farms and they are now exempt from the building permit fees. However, if they pulled a permit when the structure was built in 1987 it would have only been a \$50 fee. She said if the violation was caught prior to the recent code changes then the property owner would have had their fees doubled to \$100.

Ms. Wulfekuhle asked what the size of the building was. Mr. Reiss did not have an exact size. He said it was an existing shed with a garage that they added a small addition on to.

Ms. Switzer said they could avoid the expense of the new septic system and just add a small bathroom on the main level of the existing home, and this would bring value to the home. Mr. Reiss said they would still need to have a bedroom on the main floor. Ms. Wulfekuhle suggested adding a bed to the living room.

Ms. Schroeder asked if anyone else in the public would like to speak in favor or against this case.

Speaking to the board via zoom was Beth Houselog, Ms. Reiss's daughter, 3161 South Superior St. Milwaukee, WI. Ms. Houselog said moving her mother back into the existing home was just not that simple. She said the home was old and to access the home she would have to climb the deck. Her fear was it may cause confusion for her mother because she is no longer in the comfortable environment that she is use to. Ms. Houselog said the shed, or "Bunk House" is one level and is set up perfectly to keep her mom safe. She thinks moving her mother back to the existing home would cause a shorter life span for her mother.

Speaking to the board via zoom is Joseph Reiss, Ms. Reiss's son, 1008 South 123rd St., West Dallas, WI. He said his mother is safe in the environment that she is currently living in. He said Ms. Reiss has trouble walking and the main house has stairs and it's not possible for her to return to the existing home.

Ms. Schroeder asked if anyone else in the public would like to speak in favor or against this case. No one spoke.

Ms. Wulfekuhle asked if it mattered how long she lived in the shed. Ms. Henry said it did not matter. Ms. Henry said at this point she did not know how long she had been living in the shed.

Mr. Klein asked if the existing home was in rough shape. Mr. Reiss said no. Mr. Klein asked how long she had been living in the shed. Mr. Reiss said since about 2018 when his father passed. Mr. Schroeder asked Mr. Reiss when exactly his parents moved and reminded him that he was under oath. He said he didn't know the exact date, but his dad had his hip replaced and they moved into the shed and then moved back into the farmhouse. Then his mother had her hip replaced so they moved back into the shed. Then again moved back into the farmhouse. Mr. Reiss said then his dad became terminal, so they moved back into the shed. Mr. Reiss said they moved back and forth multiple times throughout the years.

Ms. Switzer said she thought you could not insure a home if you did not occupy it for 6 months, so she asked why they would not just tear down the existing home. Mr. Arling said you can insure an unoccupied home if the owners are on sight.

Ms. Wulfekuhle asked when the shed was originally built did it have the living quarters. Mr. Reiss said no they added the addition with the living quarters in the early 1990's.

Mr. Schroeder asked Ms. Henry if there were any permits pulled and Ms. Henry said she could not locate any permits.

Ms. Switzer asked if they could subdivide the property now into two lots and then combine the lots back together later down the road. Ms. Henry said yes.

Ms. Wulfekuhle asked if this was approved how often the Special Use Permit would have to come back for review. Ms. Henry said the condition of the decision would be specific. She said annually was talked about and she did not think it would be necessary to bring the case back to the board every 3 months. Mr. Arling said he talked with Ms. Henry about a few options for the Special Use permit such as it would expire 60 days upon death or within 30 days of vacating the property.

Mr. Arling said both properties have their own septic holding tank. He said Buesing & Associates came out to the property and designed a plan. He said they are working with 3 different contractors to place both buildings on the new septic. Ms. Henry asked if that was approved by the Dubuque County Health Department. Mr. Arling said no. He said the contractor was dealing with the Dubuque County Health Department and they will have to approve the permit.

Mr. Link said he thought the case should be tabled until they are approved to have one septic for both buildings. Mr. Arling said if they don't approve both dwellings on the same septic then they would just leave the existing home on its own septic and install a new septic system for the shed. Mr. Reiss said Buesing & Associates suggested a 1250-gallon tank to cover both homes which would be for 3 bedrooms.

Mr. Schroeder explained to the board the options were to table, approve or deny the case.

A motion was made by Ms. Switzer, **seconded by Mr. Schroeder to deny the Special Use Permit. Ms. Switzer, Mr. Schroeder and Mr. Klein voted in favor of the motion to deny the Special Use Permit. Mr. Link and Ms. Wulfekuhle voted against the motion to deny of the Special Use Permit. The motion passed. Vote: 3-2**

5. BA#05-15-23 TYLER & NICOLE DUERKSEN SPECIAL USE PERMIT

The applicants are requesting a Special Use Permit to build a 10' x 27' attached deck with a roof in a non-conforming A-1, Agricultural zoning district. The property, located along Graf Road, is legally described as Lot 2-1-1 NW SW Section 29, (T89N-R1E), Center Township, Dubuque County, Iowa.

The property is .56 acres with a Single-Family home. The applicants were approved by the Dubuque County Health Department for a 6' variance, to build the deck 4' from the septic tank to the 10' required. The applicants are building the deck to add value and the deck will match the character and aesthetics of the home. Five (5) letters were sent, (4) were delivered and the City of Graf and the Dubuque County Supervisors were notified. Richard & Alicia Soppe did not pick up their letter. There were no comments regarding this case.

Speaking to the board was Tyler Duerksen, 13435 Graf Rd, Durango. Mr. Schroeder administered the following Oath asking the participant to raise his hand. "Do you solemnly swear you will tell the truth, the whole truth and nothing but the truth?" He said yes.

Mr. Schroeder asked if he had anything to add to his case. Mr. Duerksen said the health department approved the variance request because the septic tank is a small high-grade septic system. Mr. Duerksen said he needed to build the deck in the front of the house because his backyard is only 8-10 feet to the back property line.

Ms. Switzer asked if the roof line of the deck would attach to the front of the home. Mr. Duerksen said yes, and he planned to match the roof line with the existing home.

Ms. Henry said there was no reason to ask to rezone the property to residential because the property owners would still need to request variances because of the size of the lot. Mr. Duerksen said his property is next to the city limits of Graf and he decided not to annex into the City of Graf when they approached him.

Mr. Schroeder asked if anyone had additional questions, and no one spoke.

A motion was made by Ms. Switzer, **seconded by Ms. Wulfekuhle to approve the Special Use Permit request with the condition that there must be gutters and down spouts that direct the water onto the owner's property. The motion passed unanimously. Vote: 5-0.**

6. BA#05-16-23 TYLER & NICOLE DUERKSEN VARIANCES

The applicants are requesting to build a 10' x 27' attached deck with a roof in a non-conforming A-1, Agricultural zoning district. They are requesting to build 19' from the front lot line, they will need a 61' variance to the 80' required and they are requesting to build 6' from the left side lot line, they will need a 44' variance to the 50' requested. The property, located along Graf Road, is legally described as Lot 2-1-1 NW SW Section 29, (T89N-R1E), Center Township, Dubuque County, Iowa.

The property is .56 acres with a Single-Family home. The applicants were approved by the Dubuque County Health Department for a 6' variance, to build the deck 4' from the septic tank to the 10' required. The applicants are building the deck to add value and the deck will match the character and aesthetics of the home. Four (4) letters were sent, (3) were delivered and the City of Graf and the Dubuque County Supervisors were notified. Richard & Alicia Soppe did not pick up their letter. There were no comments regarding this case.

Speaking to the board was Tyler Duerksen, 13435 Graf Rd, Durango. Mr. Schroeder administered the following Oath asking the participant to raise his hand. "Do you solemnly swear you will tell the truth, the whole truth and nothing but the truth?" He said yes.

Mr. Schroeder asked if he had anything to add to his case. Mr. Duerksen said when the home was built it never met the current setbacks. He said when he purchased the property, he thought he was purchasing more land than what he received because of the county right of way.

Mr. Schroeder asked if anyone had additional questions, and no one spoke.

A motion was made by Mr. Link, **seconded by Ms. Switzer to approve the variance request with the condition that there must be gutters and down spouts that direct the water onto the owner's property. The motion passed unanimously. Vote: 5-0.**

D. PUBLIC COMMENTS:

Speaking to the Board was Ed Raber, Project Coordinator for Dubuque County. Mr. Raber introduced himself to the board, explained the background on his work history and explained what his current job duties were with Dubuque County. Ms. Henry said that Mr. Raber had been instrumental in the county. Ms. Henry said the County Board of Supervisors is currently in the process of creating a planning position for the county.

E. OLD BUSINESS:

Ms. Henry said the COZO meeting will be coming up soon. Ms. Henry informed the board that the Pfabco case will come back to the Board in June. Mr. Schroeder asked if Ms. Wulfekuhle had to renew her application for the board and Ms. Henry said yes.

F. NEW BUSINESS:

G. ADJOURNMENT: A motion was made by Ms. Switzer, seconded by Mr. Link and passed unanimously to adjourn. Vote: 5-0. The meeting adjourned at 8:40 p.m.