

CORINNA TOWNSHIP  
MINUTES  
BOARD OF ADJUSTMENT / PLANNING AND ZONING COMMISSION

December 9, 2014

7:00 PM

1. Call to Order: Chair Charlotte Quiggle called the meeting to order at 7:00 PM.
2. Roll Call: Board of Adjustment/Planning Commission Members Present: Charlotte Quiggle (Chair); Larry Smith (Vice-Chair); Lee Parks; Patricia Taylor; Larry Thompson.  
  
Absent: Alternates Barry Schultz and Jeffrey Lundquist.

Staff: Ben Oleson, Zoning Administrator; Mary Barkley Brown, Township Clerk/Treasurer.

Others in Attendance: Richard Naaktgeboren; Joy Carlson; Marty Ferguson; Marc Fahey; Bernie Miller; Darwin Hoffman.

3. Additions to the Agenda: None. A motion was made by Taylor, second by Smith, to approve the agenda as presented. Motion carried unanimously.
4. Public Hearings
  - a. Variance to construct a 22' x 72' addition on the northwest end of a previously approved addition approximately 16 feet from a rear property line abutting a residential district (min. 50 ft required). Conditional use permit for the expansion of an existing commercial building to be used for additional cold storage, office, and retail space related to an existing wholesale business.
    - i. Applicant: Fergsba LLC (Marty Ferguson)
    - ii. Property Address: 9030 - 64<sup>th</sup> Street NW, Annandale
    - iii. Sec/Twp/Range: 33-121-27
    - iv. Parcel Number(s): 206114002040 and 206106001010

Marty Ferguson addressed the Planning Commission. When I was here in September I proposed to do the exact same thing, but corner would have been 50 feet. When the builders came out we had an overhead door facing this way (to the north). The builder asked why I did not go another 22 feet (toward the large wetland) so snow would not land in front of the overhead door. It does get us closer to that property line, but the property line actually starts to go further away at that point. Would give us more storage under the roof. I wish I would have thought of this in the first place.

Oleson: The ordinance requires a 50 foot structure setback to a residential-zoned property. The adjacent residential lot is a wetland - a common lot to residential lots nearby. We have granted a couple variances for additions here in the past. The primary concern would be a fairly steep bank. Already granted a variance - one addition to be 4 feet from line and the more recent one to be about 15.5 - 16 feet from property line. That is where hill starts to go down. Previous

variance also addressed a road setback variance. Otherwise he meets the other setback requirements. It is just for the extra part that meets the west property line.

Ferguson: Wish I would have thought of it earlier. It makes a lot of sense. The snow would land right in front of the door. That would be bad. It will just be for cold storage, no extra retail.

Parks: Cannot see anything that I have a problem with.

Thompson: This is unique property. There were no issues from neighbor's input previously. As long as Marty takes care of run-off in proper fashion, I do not have a problem.

Smith: I think it looks good.

Taylor: No problem, but want to make sure they are going to take care of the run-off both during construction and after.

Quiggle: I concur with everyone else. It was a shame that you had to come back.

Ferguson: I appreciate the process. It is a variance request and I get that. We will start when ground thaws.

Smith: A motion was made by Smith, seconded by Thompson, to approve a Variance to construct a 22' x 72' addition on the northwest end of a previously approved addition approximately 16 feet from a rear property line abutting a residential district, with conditions listed in the staff report (the same as the September 2014 variance), address the storm water, everything will be screened during the construction process, keep up the screening with greens, (no further removal of trees). Motion carried unanimously.

- b. Variance to construct a partial (28' x 40') second story dwelling addition and a 28' x 30' attached garage to an existing 28' x 64' dwelling/garage that is approximately 14 feet from the top of a bluff (min. 30 ft required). Garage addition would meet bluff setback but may be located within the (east) side yard setback requirement (to be confirmed prior to hearing).
  - i. Applicant: Marcus and Kristin Fahey
  - ii. Property address: 10129 105<sup>th</sup> Street NW, Annandale
  - iii. Sec/Twp/Range: 8-121-027
  - iv. Parcel number(s): 206000084101

Marc Fahey and his contractor, Darwin Hoffman addressed the Planning Commission.

Fahey: We have an older home, built in the 60s, purchased in 2010, sits pretty close to bluff, within the 30 feet. No matter what we would do to add on to the house we need a variance.

We plan to add a new garage to the east side of the house, and that would not be within the 30 foot setback. We would use existing garage for living space. We would put a partial second story on that space, with three bedrooms and two bathrooms in that space. This drawing - our original plan was to have the new garage set in the house a little bit. We would have had to break up the footings and foundation. We decided recently we would move the new garage over six feet instead. We would still be at 20 feet from the east property lines, so meeting that side setback.

Hoffman: I have nothing more.

Oleson: This map shows the topography and bluff line that they are close to. The new garage would meet a 30 foot bluff setback. It will meet the 15 foot required setback to the side. This portion of the house will have a second story put on it - and that would be within the 30 foot bluff setback. Also, adding on the garage to an existing nonconforming structure would have

required a variance even without the second story. The bluff impact is primarily the second story.

Fahey: There is no stormwater management on the existing house. We would put gutters on to direct runoff to the appropriate place to manage it.

Oleson: The bluff side of the house is heavily treed right now. The patio is graded back to the side. The neighboring property to the east is a two story – about same location in relation to the bluff. House to the west – full 2 story there. This is area where garage will be going, looking toward the lake. This is being converted to living space. (Showed how existing house relates to neighboring property.) Topography goes up a little bit as it goes to the east and down and flat to the west.

Fahey: We will have to put in a new well. We have to move it.

Oleson: When we have dealt with other similar requests, we make sure the foundation is strong enough to support the extra weight without impacting the bluff. A question would be whether a statement from a builder would be sufficient. In some cases we have required an engineer to look at it.

I had recommended maintaining good tree cover on the hill to minimize the visual appearance from the lake, whether it would be much different if it were 15 feet further back than it is now, recommended erosion control during construction and a permanent storm water management plan.

Quiggle asked if there were questions from public. There were none.

Thompson: Pretty decent plan to me. Ben's comment on the extra weight – I can't imagine that would be an issue but I suppose we should address it in some manner to make sure there are not issues.

Smith: My biggest concern is the storm water management plan.

Fahey: Do you have specific requests for where water goes? We would have gutters, for sure.

Smith: Directed away from the bluff, for sure.

Quiggle: Landscaping – you could tie the gutters into a tile that goes to a rain garden that goes off to the back or to the side. You would not have to empty rain barrels. That would make sure that nothing from the roof goes down the bluff.

Hoffman: A lot of times we will bring downspouts to solid drain tile and direct it to the side on road side – that would take care of itself.

Taylor: How many bedrooms upstairs?

Fahey: Three bedrooms upstairs, a master bedroom on main floor, currently a bedroom in the basement. There will be five bedrooms total. Septic is set up for a five bedroom house. It is oversized for five bedrooms. The county was OK with the sewer as it is.

Taylor: Storm water is a concern for me.

Parks: On this floor plan, are you expanding all the way across or is there a center bearing wall?

Hoffman: Parts will bear in the center, around kitchen and stairs. When you come in front door, it goes all the way across to the front of the building.

Most of the weight will be carried on the exterior walls?

Hoffman: Yes.

Quiggle: Stormwater management is paramount. Make sure the bluff will be stable with the additional weight. In conditions – says the applicant must enhance or maintain existing vegetative cover on the bluff, I would include any buckthorn on the bluff – it would be fine if you get rid of that and replace it with native plants.

A motion was made by Thompson, seconded by Smith, to grant a Variance to construct a partial (28' x 40') second story dwelling addition and a 28' x 30' attached garage to an existing 28' x 64' dwelling/garage that is approximately 14 feet from the top of a bluff (min. 30 ft. required). Garage addition would meet bluff setback but may be located within the (east) side yard setback requirement, follow recommendations in the staff report, have a plan for storm water management, and to have a qualified professional pass judgment on the weight issue.

Conditions from staff report were:

1. That the applicant submit written evidence from an engineer or other qualified professional that the additional weight of the second story on the house will not be likely to negatively impact the stability of the bluff.
2. That the applicant must maintain or enhance the existing vegetative cover on the bluff, except for removal of dead or diseased trees or underbrush as necessary or in consultation with the Township Zoning Administrator. The purpose of the buffer would be to maintain vegetative screening, avoid destabilization of the bluff, reduce the visual impact of the additions as viewed from the lake, and provide an opportunity for filtration of any stormwater runoff in this area.
3. Erosion and sedimentation control measures must be installed and maintained until the construction areas have been stabilized. These shall include at a minimum silt fences between the area of disturbance and the lake as well as to any neighboring properties which are downslope of the disturbed areas. Once disturbed areas are no longer being used for construction purposes, these shall be covered with mulch, erosion control blankets, hydroseed or other forms of temporary cover until vegetation is re-established.
4. The applicant shall submit a permanent stormwater management plan designed to minimize the potential for ongoing erosion or sedimentation and to allow adequate time for infiltration or other treatment of rainwater from the lot prior to it flowing into the lake. These may include directing rain gutters to appropriate areas, rain barrels, or other acceptable best management practices. Once approved, the plan should be implemented at the time of construction or within a reasonable time period after construction is completed and maintained indefinitely.

Oleson: For clarification: do you expect any minor adjustments in the dimensions?

Fahey: The roof line - to what extent are we allowed to change anything with the roof line once the variance is granted. Not really the pitch, but architecturally adding some things, as we are moving the garage over 6 feet. Not really the pitch. Not the structure of the house at all. Maybe for the run-off.

Hoffman: Where the dormer will sit, we might be change where the dormer is, and maybe a little different.

Oleson: If dimensions for the 28 x 40 stay the same as in the motion, to me there would be some flexibility on the design. I did not want to get into a situation where they tweak it and then have to come back. The second story addition will stay the same. Garage is 28 x 30 - will stay the same - just moving it over six feet.

Hoffman: No size changes, just cosmetic.

Taylor: You are not planning anything for the top of the garage are you?

Fahey: Attic trusses up there mainly for storage. There will be stairs going up from the mudroom for storage, but there will not ever be a bathroom or bedroom will be put there. It may be a bonus space someday if it is allowed.

Quiggle: It is an attached garage, so it is allowed.

Oleson: If they want to add another bedroom up there, it would have to be reviewed for the septic. With an attached garage there is not the same issue as with guest cabins.

Oleson: For condition of review by engineer, do you mean engineer or qualified professional, or architect - about weight on bluff?

Fahey: Otto and Associates recommended a soil engineer.

The consensus of the Board of Adjustment was to require that it be a soils engineer.

Oleson: We will go with that - a soils engineer. I will need a letter to documenting this before I could issue you a building permit.

Motion carried unanimously.

- c. Request to allow the separation of a nonconforming lot of record from an existing parcel for the purpose of sale and development. Both resulting lots are located within a floodplain and would require fill to meet elevation requirements for new construction or substantial improvements to the existing dwelling or other structures. The lot separation would result in an existing garage being located 1.2 feet from a side property line (min. 10 ft required) and a small shed straddling the lot line. One of the lots would not be suitable for a Type I sewer system.
  - i. Applicant: Mary A. Miller

Bernie Miller and Joy Carlson addressed the Planning Commission. Joy Carlson is from Remax, representing the property owner.

Carlson: The Miller family has owned a large parcel on the lake since the 1940s. She would like to separate lot 16 from the other contiguous property that she owns. We are proposing to separate lot 16 from the rest of her contiguous property and offer it for sale.

Oleson: Showed original lots, 16, 17, and 18. Lot 18 was approved to be split in the early 2000's (with part going to the adjacent lots on each side). Any time you have a group of lots owned by the same person, and they want to split the property - you must meet state statutes and some local ordinances could come into play. Before 2009 the DNR stated if you wanted to split off lots, each lot had to meet the 20,000 square foot and 100 feet wide requirements. So it meets these standards. In 2009, the state legislature went through the process of figuring out a new statute. They did a couple things [Oleson pulled up the statute on the screen]. Any time you try to fix one problem, sometimes you create other ones. They added a new section - subdivision 5 - the whole section deals with non-conforming lots, buildings, uses. So if you start out with letter a - this subdivision applies to shoreland lots of records. The applicant's lots were platted in the 1920s so they are clearly lots of record. The main question - the state has a set of minimum standards - on a general development lake - they require 20,000 sq. ft. minimum and 100 foot width. The county is more restrictive - 150 foot lot width and 1.5 acre minimum. So which does the statute apply to lots nonconforming to the state rules or the local rules? Subsection c - in a group of 2 or more contiguous lots of record under common ownership, the lot must be 66 percent of the DRN minimum... These lots clearly meet that. The lot must be connected to a public sewer or be suitable for installation of a type 1 sewer system. If we look at

lot 16, if they put the sewer on the one side, they can get a type 1 sewer system on it. A type 1 is a standard system. Type 2 can be holding tank, or a system in a floodplain. Types 3 and 4 are smaller or time dosing – things like that. This is the statutory requirement we have to talk about. 3 – Impervious surface coverage cannot exceed 25 percent of the lot. There is plenty of land to meet this requirement. 4. Development must be consistent with our comprehensive plan. If we go to the top – first statement – when the subdivision applies: Lot of record that does not meet the requirements for lot size and lot width. So whose requirements – the state's or county's requirements? There may be an argument that they already exceed the lot size that the DNR requires. They are not an acre and they are not 150 feet wide, so do not meet county rules. To me, the answers I got from the DNR were not clear [Oleson showed string of e-mails between himself and DNR staff]. I was not exactly sure that they understood my question. I did not feel like I got a clear answer from them. I talked with the county staff. Sean Riley – in the end – he said – this has not come up for us, we do not have a track record on how we would deal with this, we are dealing with state statute, not county ordinance, so it shouldn't be an issue as to whether the Township is being less restrictive than the County? Maybe the township does not have to be as restrictive as the county? Oleson: DNR said it is up to us to work with our attorney. I listened to the 2009 committee hearings of the legislature. They were not very conclusive. I called one of the DNR people I knew had helped write it. He has since retired. He has not called me back although current DNR staff thought he might be able to. The only help I have is that I looked at – back in 2005, the state came up with alternative shoreline management standards. This was their first step toward updating their rules that applied to shoreland management and development. They did it as a pilot program where they took five counties up north and tried these regulations out there so other counties could adopt. That did not happen. Governor Pawlenty stopped it in its tracks. Governor Dayton has not brought it back up again. The legislature's change did not happen until 2009. In this group of two or more contiguous lots in the same ownership– the individual lot that does not meet – the 2005 alternative standards go into different standard – the lots have to be 75 percent of minimums instead of the 66 percent in the newer statute. For whatever that is worth – they specifically referenced the state standards when applying this section. I do not know their intention. I think, in talking to Sean Riley, it would be best if the language was fixed so we know what they meant. First paragraph? Apply statute to local sizes? If so, we have to get Type I sewer on both lots. We can only get a Type 1 sewer on one lot. A few inches below flood plan. If it were a few inches higher – could use type 1. Lot 16: They are planning a type 1 system here. The neighbor would have to move their well. They cannot get a Type 1 sewer on lot 17. Bernie has designed a system that meets state standards, but not a type 1. Again – the DNR, during the legislative discussion in 2009, mentioned a couple times that they were not trying to change the sewer rules – just referencing existing PCA rules. They mentioned not allowing holding tanks as part of the legislation but didn't mention floodplain. Were they just trying to stop holding tanks? We don't know. If you look at the plain language they said Type 2 sewers which includes sewers within the floodplain. We can talk about the intent – but I think it is a lot of speculation. This has been a tough one to figure out.

There is a failing sewer on lot 17.

Miller: There is an old cesspool with a failing drain filed. This was a do-it-yourself project back in the 50s.

Oleson: Would the shed and garage that would be across or within required setbacks of the line between lots 16 and 17 as proposed be removed or stay? The local ordinance for nonconformities talks about all setbacks being met.

Carlson: The shed would be removed, but garage is going to stay.

Oleson: Do we feel we have the authority to grant this?

Quiggle asked if there were any questions from the audience. There were no questions.

Taylor: Certificate of survey and site plan from Otto. Why did they not align the cabins when they proposed in site plan? Will block both neighbors' view of the lake. I see where you put the septic, but usually you try to align the houses so they are fairly equal in distance.

Miller: It is deceiving.

Taylor: That one sits way up.

Miller: I don't know - not that that is what is going to happen. Whether they do that or not - I don't know. Ben's comment about the different types of sewer systems- there are actually five types of sewer systems. I don't think that many people understand the types and think that Type 1 is the best. Type 1 systems are designed for failure right off the bat. To say that is almost like that is a zoning requirement. The flood plain - there are very few systems we can actually design on Clearwater Lake that do not fall into Type 2. If we design a Type 3 or 4 - that would be even better. They would last longer than a Type 1.

Oleson: Originally Otto designed. This is the correct site plan - which I sent out this morning - the correct site plan.

Taylor: Would the septic system for lots 17 and 18 need to be upgraded?

Miller: Yes. I can make this system last longer - and I could make it a mound that would be a Type 2 system. It is very sandy soil and it is typically dry to the lake level - around 990'. This sits at about 995'. In the septic rule, it addressed the flood plain areas. There is no clear interpretation. It is confusing - being in flood plain - preference to be above the ten year flood elevation. Does not specify in state code. Not very clear what they are talking about when they are saying flood plain.

Smith: If there was to be a house on there - what type of material would have to be brought in to support a house?

Oleson: Otto estimated 200 yards. That would require a separate hearing. The lowest floor of the existing house meets the flood plain requirements. You can get CUP to elevate it in a different way. Nothing has to happen until they construct an addition or tear down and rebuild, etc. Not until they did something to that building - then that would kick in.

Taylor: Is that going to affect the existing well on lot 17?

Miller: No.

Smith: I am hung up on do we go with county or state standards? I have not decided. I can see where it fits in with a lot, but it has a lot of issues with it.

Quiggle: Nonconforming lot of record: non-conforming with local ordinance is how I understand it. This is not a shoreland rule. This is dealing with state statute 394. State shoreland rules do set minimum sizes. Wright County has opted to do that. By definition, it is not conforming to county ordinance. I don't think we can jump into the minds of the state legislators. If they are specifying Type 1 sewer systems... they seem to know Type 1 exists. This did not come without a lot of discussion at the legislature. I think we have to go with what the plain language says.

Thompson: The plain language would say that you cannot get a Type 1 on both pieces - then you cannot grant it. I would have to think that you are right about this.

Oleson: I have not talked to the township attorney.

Parks: I think that if the State wrote all this language – then that language goes with the size of the lot that they stated. The county did not address anything when they had the chance.

Quiggle: It says it cannot be smaller than 66% of the minimums under rule 6120. I don't see how we can ignore the Type 1 sewer system.

Miller: If this is law, and you listen to the debate of all the hearings, would that not have been included in there? Otherwise we can make up lots of other things they omitted. We can't...it pretty clearly says that if you can't meet that – you fall into this chapter. These are huge lots for us to work with.

Oleson: Ordinance has not been changed since 2009 when statute came into play. If any one of them is less than 20,000 sq. ft. – you cannot separate them. Before 2009, county said we will let these kinds of lots be developed.

Oleson: 2009 the legislature jumped in with their changes. Back around that time, a resident in the township was pressuring their legislator. There were lots out there that people could not develop. In that sense, I think they were trying to make it easier to develop lots, not harder. Like Charlotte, says, we cannot get into their minds to know for sure though.

Thompson: If we go by the state – it is a slam dunk [can't let these lots be sold separately]. If we go by the county – then both lots have to have a Type 1 septic system. In either case the answer is no.

Oleson: Not necessarily. In my discussions with Sean Riley we agreed it is either one or another. If statute applies to lots that are nonconforming to our local standard, then we have no authority to grant this because we cannot get a Type 1 sewer system on both lots. If it applies only to lots that don't meet state standards, I would have to grant it subject to Section 404 of the Township Ordinance. I can either approve this administratively or we cannot do it at all. There is almost no in-between. If you had a single lot of record that already had a house on it, the county never required a Type 1. You can keep living there, even though you do not have a Type 1. So this applies to a bare lot – then you need a Type 1 sewer. They seem to make accommodations for existing houses on lots.

Quiggle: If you already have a house – we can't do anything. But if there is land that has not been developed, and it is nonconforming then we are not going to allow you do stuff that is undesirable.

Oleson: It is clearly a non-conforming lot. But if it is a non-conforming lot to the state, then it has to meet that other section.... So I think, to me, we are going to vote on this, or talk to the township attorney and get his recommendation. Or table for attorney opinions.

Parks: I think that if we are going to change what we think is a non-conforming lot – then we have to go with the county. The county should state the rest of this, too.

Taylor: I would like to see it tabled and more research done on it. I did not get a lot of time. I would like to do some research on my own and talk to a few more people.

Oleson: Opinion from county attorney, state attorney general, township attorney, etc.?

A motion was made by Taylor, seconded by Thompson, to table the matter until next month's meeting so that more research can be done. Motion carried unanimously.

## 5. Approve Previous Meeting Minutes

### a. November 13, 2014

A motion was made by Smith, seconded by Taylor, to approve the November 13, 2014 Meeting Minutes. Motion carried unanimously.

## 6. Zoning Administrator's Report

- a. Permits
- b. Correspondence
  - i. Discuss 6850 Inman Ave NW – variance application with no specific building/site plan at time of application (to help make the property more buildable)

Oleson: Would you be comfortable granting a variance where there are not specific site or building plans – just a “box” that they would be approved to build in not meeting certain setbacks? In this case, it would be a bluff and road setback that would most likely apply. They can’t meet both and still fit in a min. 24 ft house. They are trying to sell this lot. They are thinking if they can get a variance for a box to build in – they might have more chance of selling. Generally we require very specific plans. They would have to submit sewer design and show where the well would go – or say they came in with a specific plan and location - then that is what you are approved for. If buyer did not like that plan – then they would have to come back for another variance. There are a fair number of people that come in with purchase agreements. If we approve a plan, then we would act on it.

Quiggle: How tall is the building? How tall – is more of a problem being close to the bluff than how tall.

Oleson: If a realtor came in with a plan, we would have to hear it.

The consensus of the Board was that an applicant would need to bring in a fairly specific plan and that is what would be approved or not. Cannot grant a variance for a vague “box”.

- c. Enforcement Actions
- d. Findings of Fact – Previous PC/BOA Decisions – discussed that Cantin conditional use decision from last month has been drafted out for recording, but Staff is awaiting whether the conditions of that approval have been met and whose name to list as the owner.

## 7. Other Business

- a. Comprehensive Plan Update (tabled).

## 8. Adjournment

A motion was made by Smith, seconded by Taylor, to adjourn the meeting. Motion carried unanimously. The meeting adjourned at 8:51 p.m.

Minutes respectfully submitted by Mary Barkley Brown, Township Clerk/Treasurer