BOARD OF ADJUSTMENT MEETING MINUTES
City Council Chambers
501 4th Street
June 13, 2024 at 5:30 PM

Meeting called to order by Clark at 5:30 PM

IN ATTENDANCE WERE:
Present: Clark, Johnson, Lamb , Jensen, McCrory
Absent:

Others present:
Aaron Lincoln, City Administrator
Sarah Kleber, City Attorney
Danny Christoffers, Secretary
Jim & Donna Carlin, Applicants

Approve Minutes of the Previous Meeting
A motion was made by Lamb, seconded by Johnson to approve the minutes of May 2, 2024.
All votes were ayes, and the motion carried.

Public Hearing
The public hearing is being held to consider a variance request for 602 Jace Road. The request is for a variance from Zoning Code 165A.31(1) which states: "No accessory building or structure shall be placed in an easement. Examples of accessory buildings or structures which may not be placed in an easement include but are not limited to storage sheds, detached garages, carports, children's play equipment, pools (above or in ground)."
The applicant recently installed a retaining wall within the drainage easement on the applicant's property and is requesting to maintain the existing retaining wall in the 10 feet wide drainage easement located along the east side of the property of 602 Jace Road.

A motion was made by Lamb, seconded by Johnson to open the public hearing at 5:32 pm.
All votes were ayes, and the motion carried.

Jim Carlin, 602 Jace Road, described the unique shape of the property. He previously requested the City Council to allow the sidewalk to be moved which was approved. They also wanted to build a retaining wall, and they requested some city officials to come to look at it. It was the Carlins' understanding that the wall could be built next to the sidewalk. They were told they would need to build around a drainage cover. Carlin submitted photographs of the property and construction. They believe they complied with the requirements. He explained that the wall cost $11,500.

Jeff Lang, 600 Jace Road, explained that he lives just north of the Carlins. He is satisfied with what has been done to the property, and he has no issues.

Jim explained that they provided a description of the drainage capacity of the wall itself. He described how well the wall is constructed and built to facilitate additional drainage. Prior to building the wall, he reported his property was like a mudslide.

Anthony Lamb asked for confirmation that the issue at hand is the east end of the wall.
Jim confirmed that it is, the other section of the retaining wall built in the City's right of way will be for the City Council to address.

Jim explained that they asked for boundaries to be marked. They were marked by pink flags. The wall is behind pink flags.
Brent Jensen asked who marked those?
Donna said that the builder called somebody. They marked the pins. They trusted that.
Aaron Lincoln said that would have probably been a surveyor.
Jim asked if the City received any calls from neighbors?
Danny said that he had not.
Jim explained that his neighbors also believe it enhances the appearance.
Donna explained that when she called them out she told them that they want to do it according to code. They walked along where we proposed the wall, at that time they didn't see a problem. They assumed it was ok because they didn't get a "no". They lived outside a city for 27 years so they're not familiar with the process.
Jim described how this prevents a mud slide. They did not intend to not follow the rules.
Donna described how they asked how they install the wall with the drain near the wall.
Jim said that they stand to receive substantial harm if they take down the wall, and he doesn't believe that the case has been made that a substantial harm has been made to the interests of their neighbors. for the City to justify an action that punitive.

Garry Clark asked for confirmation that the City had not received calls or questions from neighbors.
Danny confirmed that he had not. Danny stated that the Notice of the Public Hearing was mailed to the property owners within approximately 200 feet, was published in the local paper, and was posted in the three standard locations.

Brent asked how long the piece of the wall is that is being considered for a variance?
Someone stated that it was about 30-35 feet.
Danny said that the County's website shows about 46 feet.

Aaron Lincoln advised that a staff summary was provided and submitted for the Board's record. For the lots in Serenity Point, City representatives talk to the builder at some point in the project and let them know the rules for those drainage easements. Staff told Aaron City staff also had a conversation about their plans for the wall with the Carlins, but staff would say that no specific directive was given that placement of the retaining wall inside the drainage easement was "Ok". Ultimately, it is the property builder's or owner's responsibility to meet the codes regardless of any discussion with a staff member. The builder of the wall is not the same as the builder as the house. The original site plan site plan that was given doesn't show a retaining wall on the building plans so City staff did not have any written plans to review. If the wall can do the work of retaining water similar to what we normally see with a swale in the back, from staff's perspective, whey can recommend the wall remaining in the easement positively to the Board of Adjustment.

Anthony asked if the swale is a depression for the water to be retained?
Aaron explained that the City of Sergeant Bluff is required by the IDNR to provide onsite detention in some developments. There are many ways to get there, and a swale isn't always a required feature. From an engineering perspective, the retaining wall meets the minimum requirements. However, at the City's code regarding drainage easements states that no structures are not allowed to be placed in the

easement. Staff does not have the ability to allow what is prohibited. The City's request is to allow the property owners keep the wall but require that it be moved 5 feet to allow a little room.

Anthony asked if there are other utilities in the drainage easement other than the storm sewer?
Aaron said there are not. The storm sewer is accessible. Due to the height of the retaining wall, construction of the wall did not require a permit. The part of the retaining wall in the City's right-of-way cannot be addressed by the Board of Adjustment. If the Board were to approve the variance, 165A.31(4) in the City's Zoning Code states: "The City of Sergeant Bluff shall not be liable for damages to an improvement, accessory building or structure, landscaping, plantings or fence located within an easement area caused by installation, repair, maintenance, or replacement of drainage ways or utilities located therein by the City or other authorized governmental agencies and private utilities." Aaron requested that information be included in the Board's resolution, so that there is no question if anyone needs to get into the easement, it is not the City's liability to put the wall back.

Brent asked if the Carlin's understood that.
Jim Carlin said "Completely".

Carl Johnson asked about a section of a lot north of the property.
Aaron Lincoln said that would not affect the next person building there It would be greenspace, and property owners can't put sheds in the setback.

Jenni McCrory asked what the submitted pictures from the property owners were showing?
Donna explained that they are showing the process for how the wall was built.
Jim said that the builder put a lot of gravel in there and holes to facilitate the drainage.

A motion was made by Johnson seconded by Jensen to close the public hearing at 5:56 pm.
All votes were ayes, and the motion carried.

<u>Board Discussion & Decision</u>
The Board of Adjustment reviewed 165E.03 subsection 2 which provides the standards for granting a variance.

Anthony explained that due to the uniqueness of the lot and the fact that the retaining wall is already there, granting a variance makes sense. A few conditions could be done to address the need for utility access. If it impacts the drainage of the neighborhood, such that someone's basement floods or something similar to that, it would not be the City's responsibility. If the wall were to be destroyed, this would need to be revisited. For consideration factors, the drainage exists for the public interest but given the way it's structured and the additional 5 feet on the other side of the property line there is probably sufficient space for the drainage to be in compliance with public interest. He believes that removal would place an unnecessary hardship on the property, and it would be harder to use without the wall. It fits into the spirit of the zoning code.

Jenni stated that the water can drain in an appropriate way with the wall without causing hardship

Carl said that with the way the wall is built, it's still retaining water but allowing the water to go through. It will help keep dirt and other items out of the drainage.

Brent explained that the drainage may be improved with the wall there.

A motion was made by Anthony Lamb seconded by Brent Jensen to approve the variance to allow the applicants to maintain the existing retaining wall as currently placed in the 10 feet wide drainage easement located along the east side of the property at 602 Jace Road. The variance was granted on the following conditions:

1. The drainage easement shall remain in place allowing utility access as needed, and consistent with 165A.31 subparagraph 4,:
   the City of Sergeant Bluff shall not be liable for damages to the retaining wall located within the drainage easement area caused by installation, repair, maintenance, or replacement of drainage ways or utilities located therein by the City or other authorized governmental agencies and private utilities.
2. If the wall impairs drainage of the neighborhood that results in damage to the property of a neighbor, the property owners will be responsible for all damages, and the City of Sergeant Bluff shall not be responsible.
3. If there is a destruction, collapse, or substantial change to the wall, the wall cannot be rebuilt into the area without the property owners seeking another variance in advance of the wall being repaired or rebuilt.

In granting this conditional approval of a variance, the Board of Adjustment found that the variance is in harmony with the intent of the City's Zoning Code and applicable state law. The Board made the following findings of fact:

1. The granting of variance is not contrary to the public interest because the wall does not impede the easement for drainage and potentially improves the drainage.
2. With the wall being constructed, a literal enforcement of the Zoning Code would be an unnecessary hardship because of the limitations on the back yard in the lot and the cost to move the retaining wall.
3. The variance is supported due to the odd shape of the lot and the special conditions that surround the needs of that lot.
4. The spirit of the zoning code is observed with granting the variance and substantial justice is done with the conditions provided to permit the wall to continue to exist.

Roll Call Vote: Clark- abstained, Johnson- yes, McCrory- yes, Jensen- yes, Lamb- yes.
Motion Carried, 4-0-1

Next meeting date

The Board will meet on July 1st to consider a variance for 200 Prairie Bluff Drive.

Adjournment

A motion was made by Johnson, seconded by Lamb to adjourn at 6:13 pm.

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Danny Christoffers, Secretary Garry Clark, Chairman