

**Board of Adjustment  
City of Mount Vernon**

August 23, 2011 - 6:00 PM - City Hall

The Mount Vernon Board of Adjustment met on August 23, 2011 at 6:00 p.m. with the following members present: Moe Richardson, Lori Boren, Pat Charboneau, and Gary Ulch. Zoning Administrator present: Perry Gruver. Also in attendance: Mark and Lindsey Hocker, representatives from Winkel Design and City Attorney Robert Hatala. At 6:00 p.m. Chairman Moe Richardson called the meeting to order.

1. Approval of Agenda. Motion made by Charboneau, seconded by Boren to approve the agenda.
  
2. Discussion and possible action: Variance of front setbacks on new construction at 302 Sixth Street NE, Mount Vernon, Iowa. After a notice of public hearing was published both in the Cedar Rapids Gazette on August 12<sup>th</sup> and the Lisbon-Mount Vernon Sun on August 18<sup>th</sup>, the Mount Vernon Board of Adjustment met to discuss the variance request from Mark Hocker for the required front setbacks. The original building permit submitted by Mr. Hocker was denied as it did not meet the setback requirements of the zoning code because the front face of the house was approximately 40' from the front property line instead of the permitted 30'. After a discussion of approximately 1 hour and 15 minutes of each of the requirements for granting a variance, the board voted 3-1 to approve the variance (see attachment below). The board granted the variance because the existing houses were constructed pursuant to a prior zoning ordinance with different setback requirements. Applying the more recent ordinance to the Hocker lot and considering the curvature of the front yard, the board determined that a strict application of the more recent ordinance resulted in peculiar and exceptional practical difficulties in constructing a home on this lot. In particular, because the existing homes were constructed under an older zoning ordinance, construction of the Hocker home using the newer ordinance would have resulted in the home being out of character with the existing homes defeating the purpose of zoning and would actually be a detriment to the existing homes. Even though the Hockers may have been able to build a house on the lot, the layout resulting from the newer ordinance and the curvature of the street would have resulted in the living area of the home to be farther toward the street than adjacent properties.

There was no one from the general public in attendance at the meeting; therefore no objections were made to the granting of the variance.

Charboneau made a motion to approve the variance after finding that the requirements of Section 1310d had been met by the applicant for a variance. Charboneau's motion, seconded by Boren. Those in favor: Charboneau, Boren and Richardson. Those opposed: Ulch. Motion carried, variance approved.

A motion was made by Boren and seconded by Ulch to adjourn the meeting at 7:16 p.m.

Respectfully submitted,  
Marsha Dewell  
Administrative Assistant.

## **Requirements for the granting of a variance by Board of Adjutment**

**a) Strict application of the zoning ordinance will produce undue hardship and would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance.**

The strict application of this zoning ordinance will produce an unnecessary hardship due to the curvature of the lot front, preventing us from rights commonly enjoyed by other properties adjacent to the proposed building lot.

The Supreme Court in Iowa has stated that a Board has “power to authorize such variance from the terms of [an] ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed.”

An ordinance may be very strictly applied (meeting the "letter" of the law) or applied to meet the "spirit" of the ordinance; we wish to show our regard and respect the spirit of the ordinance as well as its intent.

**(b) Such hardship is not shared generally by other properties in the same zoning district and in the same vicinity.**

The curvature of the road, which impacts the shape of the lot and the measuring points of the setbacks, is specific to this lot and is not shared by other properties. It is, in fact, the only property on this street without an existing structure. Therefore, the request for a variance is so specific to this property and its shape, that it would not create a situation where the Board would be flooded with further requests for variances.

**(c) The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance.**

The planned house will not create any unfavorable or negative impact to adjacent properties or the character of the neighborhood; and, in fact, should enhance the value of adjacent properties. We are including statements of support from all of the adjacent neighbors, none of whom have stated any objections.

**(d) The granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice.**

The variance being requested for this property is not for our convenience, not for our profit and we are not acting with caprice, but quite the opposite. We take this process very seriously and wish to improve the property, honor the intent of the ordinance and work with the limitations of the lot shape.

**(e) The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable a general regulation to be adopted as an amendment to this Zoning Ordinance.**

As stated in (b) above, the request for a property setback variance is due to the curved shape of the lot front, creating a specific situation where the measuring points of setbacks are uncertain or disputable.

The situation is extremely unlikely to recur; therefore, it should never necessitate any amendment to the zoning ordinance, as it is not general in nature.

**(f) The granting of the variance will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of any Ordinance or Resolution.**

The “public good” is often defined in economic terms and we assume that it applies in this situation. Therefore, we can strongly state that the planned construction will benefit the adjacent homeowners through increased property values, benefit the neighborhood by the building of an attractive and substantial home, and benefit the city, county and state through increased property taxes.

We understand that the aim of the zoning ordinance is to create a uniform and enhanced property appearance; we wish to honor the intent of the ordinance and we believe that the planned construction will satisfy the spirit of the ordinance and will meet it in the stricter sense by the granting of a modest variation to the property setbacks.

Thank you for your consideration.

Respectfully submitted,

Mark and Lindsey Hocker