

**MINUTES OF THE
MINNEHAHA COUNTY PLANNING COMMISSION**
January 23, 2012

A meeting of the Planning Commission was held on January 23, 2012 at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

COUNTY PLANNING COMMISSION MEMBERS PRESENT: Gerald Beninga, Bonnie Duffy, Mike Cypher, Susie O'Hara, Mark Rogen, Wayne Steinhauer, and Becky Randall.

STAFF PRESENT:

Scott Anderson, Pat Herman, Dustin Powers and Ryan Streff - County Planning
Kersten Kappmeyer – Office of the State's Attorney

The meeting was chaired by Susie O'Hara.

CONSENT AGENDA

A motion was made by Beninga and seconded by Cypher and **approve** Items 2 thru 5, 7, and 9 of the consent agenda. Items 6, 8, and 10 are deferred until the February 27, 2012 meeting. The motion passed unanimously.

ITEM 2. Approval of Minutes – November 28, 2011

A motion was made by Beninga and seconded by Cypher to **approve** the minutes from November 28, 2011. The motion passed unanimously.

ITEM 3. CONDITIONAL USE PERMIT #12-01 to transfer a two residential building eligibilities from Tract 3A Reit Addition to Tract 1 Reit Addition and to transfer one building eligibility from Tract 4 Reit Addition to Tract 2 Reit Addition, all in Section 29-T104N-R49W.

Petitioner: Kim Reit

Property Owner: same

Location: Two miles south of Dell Rapids

General Information

Legal Description – Tracts 1, 2, 3A, and 4 of Reit Addition E ½ NW ¼ & W ½ NE ¼ & NE ¼ SW ¼ Section 29-T104N-R49W

Present Zoning – RC Recreation/Conservation

Existing Land Use - Agriculture

Parcel Size – 40 Acres

Staff Report: Dustin Powers

Staff Analysis

This is a request to transfer three residential building eligibilities. The petitioner owns Tracts 1, 2, 3A, and 4 of Section 29 in Dell Rapids Township. Approval of the transfer request would move two unused eligibilities from Tract 3A Reit Addition to Tract 1 Reit Addition and to move one unused building eligibility from Tract 4 Reit Addition to Tract 2 Reit Addition, all in Section 29 of Dell Rapids Township.

This would allow for the eligibilities to be closer to highway access and allow the applicant to retain the eligibilities when selling the farm ground. These properties are located in the floodplain, therefore any potential building will need to obtain a Floodplain Development Permit from the Planning Director before issuance of a building permit.

1) The effect upon the use and enjoyment of other property in the immediate vicinity for the uses already permitted, and upon property values in the immediate vicinity.

The surrounding land use is predominately agricultural crop ground. The petitioner's request to transfer building eligibilities will not increase the number of dwellings allowed under density zoning.

2) The effect upon the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.

There should be no major effect upon the normal and orderly development of the area.

3) That utilities, access roads, drainage and/or other necessary facilities are provided.

The construction of new dwelling units is required to be in conformance with the County's zoning, septic and building code. The petitioner will need to obtain a driveway permit from the County Highway Department before the County can issue a building permit.

4) That the off-street parking and loading requirements are met.

The minimum required lot size for a residential dwelling is 1 acre. This is sufficient space to meet any parking needs for a single family home.

5) That measures are taken to control offensive odor, fumes, dust, noise, vibration, and lighting (inclusive of lighted signs), so that none of these will constitute a nuisance.

These should not be at a level as to constitute a nuisance.

Recommendation:

Staff finds that the requested transfer is in conformance with the zoning ordinance and recommended approval of Conditional Use Permit #12-01 with the following conditions:

- 1) Each housing site shall be platted, file a right-to-farm notice on the deed and obtain a Floodplain Development permit for each lot, prior to the issuance of a building permit.
- 2) The County Highway Department shall approve any new driveway access.

Action

A motion was made by Beninga and seconded by Cypher to **approve** Conditional Use Permit #12-01 with stated conditions. The motion passed unanimously.

CUP #12-01 - APPROVED

ITEM 4. REZONING #12-01 to rezone a property from I-2 General Industrial to A-1 Agriculture.

Petitioner: Bones Hereford Ranch, Walter Bones

Property Owner: Same

Location: 3.5 miles southwest of Wall Lake

General Information

Legal Description – That portion North & East of the W1750' S800' (Except the S485' W450' E1750') SE ¼ Section 35-T101N-R52W

Present Zoning – I-2 General Industrial

Existing Land Use - Agricultural

Parcel Size – approx. 27 Acres

Staff Report: Pat Herman

Staff Analysis:

The property to be rezoned is located approximately 3.5 miles southwest of Wall Lake, at the intersection of County Highway 159 and the Turner County line. The surrounding land use is in agricultural production and zoned A-1 Agricultural.

On February 20, 2009 this property was rezoned from A-1 Agricultural to I-2 General Industrial. The petitioner operates a farm-sized ethanol plant on the property. In 2009 he had plans to increase production to the level which would require industrial zoning.

The market has since changed and the petitioner has decided against enlarging the ethanol plant. The uses on the property are agricultural and the petitioner would like to down zone the property to reflect its current use. The A-1 Agricultural zoning is consistent with the zoning on the surrounding properties and in conformance with the Comprehensive Plan.

Recommendation:

Staff finds the rezoning request to be congruent with the existing land use of the property and recommended approval of Rezoning #12-01 from I-2 General Industrial to A-1 Agricultural.

Action

A motion was made by Beninga and seconded by Cypher to **recommend approval** of Rezoning #12-01 from I-2 General Industrial District to A-1 Agricultural District. The motion passed unanimously.

REZONING #12-01 – APPROVAL RECOMMENDED

ITEM 5. REZONING #12-03 to rezone a property from the Lake Shore Luxury Estates PD Planned Development to A-1 Agriculture.

Petitioner: Quoin Financial Bank c/o Jason Sundberg

Property Owner: Same

Location: southwest edge of Wall Lake

General Information

Legal Description – Lots 1-12 Block 1 Lake Shore Luxury Estates an Addition in the SW ¼ of Section 21-T101N-R51W

Present Zoning – Lake Shore Luxury Estates Planned Development District

Existing Land Use - Vacant

Parcel Size – Approximately 4 Acres

Staff Report: Pat Herman

Staff Analysis:

This property is located on the southern end of Wall Lake, just to the west of the public boat ramp. Access to the lot is from County Highway 146 and the property is located in the Wall Lake sanitary sewer district.

This property was zoned to PD Planned Development District Lake Shore Estates on May 18, 2007. The owner of the property envisioned an eleven lot subdivision with a community recreation area. Development was never started on the site and the property has since been repossessed and is now owned by the petitioner.

The petitioner is requested that the property be down zoned to the original zoning - A-1 Agricultural. This action will allow the property to be sold with one residential building eligibility. One eligibility is consistent with the Wall Lake sanitary sewer district's design plan for the number of sewer hook ups on the existing system.

Recommendation:

Action to rezone the property will return the property to its original district and is in harmony with the development plans for the Wall Lake area. Staff recommended approval of Rezoning #12-03 to rezone property from PD Planned Development to A-1 Agricultural.

Action

A motion was made by Beninga and seconded by Cypher to **recommend approval** of Rezoning #12-03 from Lake Shore Luxury Estates Planned Development District to A-1 Agricultural District. The motion passed unanimously.

REZONING #12-03 – APPROVAL RECOMMENDED

ITEM 6. REZONING #11-04 to allow a minor amendment to a Planned Development (PD).

Petitioner: Eric Willadsen

Owner: VFS, LLC

Location: SW corner of State Highway 42 & 481st Avenue

General Information

Legal Description – Tract 1 Jeanne's Addition NE ¼ & SE ¼ 28-T101N-R48W

Present Zoning – PD – Planned Development

Existing Land Use - Vacant

Parcel Size – 12.53

Staff Report: Pat Herman

Staff recommended that this item be deferred to the February 27, 2012 meeting.

Action

A motion was made by Beninga and seconded by Cypher to **defer** Rezoning #11-04 to the February 27, 2012 Planning Commission meeting. The motion passed unanimously.

REZONING #11-04 - DEFERRED

ITEM 7. CONDITIONAL USE PERMIT #12-03 allow a contractor's shop and storage yard with outside storage – concrete contractor.

Petitioner: Nate & Lori Limoges

Property Owner: Green Valley Development, LLP

Location: 25732 Cottonwood Ave. I-29 Crooks exit

General Information

Legal Description – Lot 3A Block 3 & the S ½ of Lot 2 Block 3 in Green Valley Addition & that portion of Lot AB-1 in Lot H2 NE ¼ lying adjacent to said lots; all in Section 12-T102N-R50W

Present Zoning – I-1 Light Industrial

Existing Land Use - Vacant

Parcel Size – Approximately 5Acres

Staff Report: Ryan Streff

Staff Analysis

The petitioner is requesting approval of Conditional Use Permit #12-03 to allow a contractor's shop and storage yard for a concrete business (Limoges Construction, Inc.). The subject property is located in Section 12 of Benton Township and within the industrial park area in the northwest corner of the Crooks/Renner Exit off of Interstate-29. The parcel as described is located on the east side of Cottonwood Avenue and just north of Dominic Street. The proposed property to be purchased by LCI Construction is approximately 3 acres in size.

The surrounding properties are all zoned I-1 Industrial District with the exception of the land that is zoned A-1 Agricultural across Interstate-29 to the east. The area on the east side of Interstate-29 is used mainly for farming operations.

The applicant has submitted a site plan that indicates a 46'x68' office, 80'x125' shop and a fence storage yard. The site plan that was submitted does not show a screening fence surrounding the entire storage yard. Staff would like to note that a screening fence shall surrounded the entire storage yard and be a minimum of eight (8) feet in height with a minimum of 90% opacity. The site plan also indicates a concrete parking lot with 33 spaces on the south side of the building and an additional concrete service driveway on the north side of the building that accesses the storage yard.

Please see the petitioner's narrative and site plan for more details regarding the business and the location of the use.

1) The effect upon the use and enjoyment of other property in the immediate vicinity for the uses already permitted, and upon property values in the immediate vicinity.

This is an industrial area, so the proposed use should blend in quite well and should not impact the use and enjoyment of other property in the area. This type of business will not impact property values, provided no concrete forms, materials, supplies or equipment are stored outside of the fenced/screened area.

To preserve the view from all roadways proper screening shall be erected around all outside storage areas. All outside storage is required to be screened from public view. The screening fence shall be at a minimum of eight (8) feet in height with a minimum of 90% opacity maintained over the entire height of the fence. The fence shall be maintained in earth-tone colors such as browns or greens.

2) The effect upon the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.

The proposed use should be compatible with those types of uses that are predominant in this industrial development. The proposed use is consistent with the types of uses found in industrial zoning districts and should not impede future industrial development in the area.

3) That utilities, access roads, drainage and/or other necessary facilities are provided.

Access to the site will be provided off of Cottonwood Avenue. Two accesses are being proposed at this time, one to access the office/shop area and the other to access the fenced storage yard. All natural drainage shall be maintained and erosion control measures be implemented on all disturbed areas so as not to allow any sedimentation of existing drainage ways or bodies of water. No other utilities or facilities are being proposed at this time.

4) That the off-street parking and loading requirements are met.

The Zoning Ordinance specifies two (2) parking spaces for each three (3) employees on the maximum shift, plus space to accommodate all trucks and other vehicles used in connection with the business. This parking requirement assumes that the property is being used for storage, warehousing and other industrial type purposes and that no retail space is constructed. The applicant indicated that they employ between 40-80 employees depending on the time of year, however, only 15-20 employees use the facility on a day-to-day bases. At this time staff is satisfied with the 33 parking spaces that the applicant has proposed on the site plan. The employee and customer parking areas must be hard-surface. The site plans shows these parking areas to be paved.

5) That measures are taken to control offensive odor, fumes, dust, noise, vibration, and lighting (inclusive of lighted signs), so that none of these will constitute a nuisance.

The applicant will be conducting a business that will produce some noise, dust and vibration. The owner shall take measures to control the amount of these nuisances so that adjacent property owners are not affected. The area is located within an industrial area and should not be out of line with noises typically found in an industrial area. All outside lighting shall be fully cut-off and fully-shielded with recessed lights that prohibit the spillage of light beyond the boundaries of the property.

Recommendation

Staff found that the proposed use is appropriate within the industrial area and recommended approval of Conditional Use Permit #12-03 to allow for a contractor's shop and storage area with the following conditions;

- 1) That the lot shall adhere to the submitted site plan and application dated 12-29-11.
- 2) That the fencing shall be a minimum of eight (8) feet in height with a minimum of 90%

- opacity maintained over the entire height of the fence. The fence shall be maintained in earth-tone colors such as browns or greens.
- 3) That the fence shall surround the entire storage yard.
 - 4) That the applicant shall meet the parking requirements as outlined in Article 15 of the Minnehaha County Zoning Ordinance. The Zoning Ordinance specifies two (2) parking spaces for each three (3) employees on the maximum shift, plus space to accommodate all trucks and other vehicles used in connection with the business. At this time staff is satisfied with the 33 parking spaces that the applicant has proposed on the site plan.
 - 5) That all driveways, parking lots, and loading/unloading areas shall be constructed with a hard surface.
 - 6) That all natural drainage shall be maintained and erosion control measures be implemented on all disturbed areas so as not to allow any sedimentation of existing drainage ways or bodies of water.
 - 7) That all outside lighting shall be fully cut-off and fully-shielded with recessed lights that prohibit the spillage of light beyond the boundaries of the subject property.
 - 8) That no unlicensed vehicles, inoperable or partially dismantled vehicles or equipment, or parts shall accumulate on the property.
 - 9) That the normal hours of operation shall be from 6 A.M. – 8 P.M.
 - 10) That if the petitioner decides to change the layout of the property a new site plan shall be submitted to the Planning Department for approval.
 - 11) That a minimum of a 15 foot green space/landscaping buffer shall be provided from the front property line setback. No parking of any vehicles or equipment is allowed in this area.
 - 12) That the business operator shall obtain and maintain a South Dakota sales tax license.
 - 13) That all setbacks for the property shall conform to all requirements stated in *Article 7.00 I-1 Light Industrial District*.
 - 14) That all signage shall comply with the zoning ordinance requirements stated in *Article 16.00 On-Premise Signs*.
 - 15) That a building permit is required before any construction is commenced or signage placed on the property.

Action

A motion was made by Beninga and seconded by Cypher to **approve** Conditional Use Permit #12-03 with stated conditions. The motion passed unanimously.

CUP #12-03 - APPROVED

ITEM 8. CONDITIONAL USE PERMIT #12-04 allow equipment sales and display.

Petitioner: HLJ Inc. Renner Equipment Corky Jackson

Property Owner: same

Location: 25768 Cottonwood Ave. I-29 Crooks exit

General Information

Legal Description – Lot 4 Block 4 of Haug’s 2nd Addition SE ¼ of Section 12-T102N-R50W

Present Zoning – I-1 Light Industrial

Existing Land Use - Vacant

Parcel Size – 6.59 Acres

Staff Report: Ryan Streff

Staff Analysis

Staff recommended that this item be deferred to the February 27, 2012 meeting.

Action

A motion was made by Beninga and seconded by Cypher to **defer** Conditional Use Permit #12-04 to the February 27, 2012 Planning Commission meeting. The motion passed unanimously.

CUP #12-04 - DEFERRED

ITEM 9. CONDITIONAL USE PERMIT #12-02 allow a Recreation Facility – Drive-In Theater.

Petitioner: Marilyn Alvine

Property Owner: Francis Phillips

Location: 26767 466th Ave. Wild Water West Property

General Information

Legal Description – That part of the East 1400' of Tract 2 Matzen's Addition NE ¼ S ½ of Section 36-T101N-R51W, lying with the NE ¼ thereof, except Lot H2 in the NE ¼ thereof

Present Zoning – A-1 Agriculture

Existing Land Use - Commercial

Parcel Size – Approximately 27 Acres

Staff Report: Scott Anderson

Staff Analysis

The applicant is requesting to develop the subject property into a two (2) screen drive-in movie theater. While this use is not identified as a specific conditional use within the A-1 Agriculture District, it is considered a recreational facility and is consistent with the other recreational uses already allowed through conditional use.

Staff conducted a site visit on January 5, 2012. Generally the site is fairly level. Some site grading had been done on this site to make it more suitable for past Lifelight events. Wild Water West is located directly to the south, while a convenience store and former Second Chance Animal Rescue are located to the north. The property to the west and east are vacant and used for agricultural purposes.

The applicant has prepared a detailed site plan and narrative explaining how the drive-in will operate and how it will look. This information has been included for your review. The applicant indicated that development of the drive-in would start this spring and take approximately one (1) year to complete. The drive-in would open in the spring/summer of 2013. The drive-in will consist of two (2) screens. One will accommodate 400 cars and the other 300 cars. Both screens will be 60 feet by 100 feet and will stand 15 feet off the ground. The screens face each other in a northwest/southwest configuration. The applicant has indicated that the primary access roads into the drive-in parking areas will be hard surfaced. The driving lanes or rows will have a gravel/grass surface. A playground is proposed in front of each screen.

The site plan also depicts the proposed general landscaping. The applicant is proposing a row of trees to be planted along the east driveway, between the exit road out of the smaller drive-in to the northeast and S.D. Highway 17. There will also be two (2) green areas between the drive-ins. The applicant is also proposing many thousands of feet of split rail fence with lighting. This will help direct the traffic into and out of the facility.

The applicant is proposing to construct a marquis sign along the southeast corner of the proposed site along S.D. Highway 17. The narrative did not indicate the proposed height of the sign. Staff

contacted the applicant and he indicated that the sign would be smaller than the existing sign for Wild Water West, which is 12 feet by 32 feet. A smaller sign would not obstruct the view of the existing water park sign. The applicant is proposing an on-site sign for the drive-in that is 15' wide and 25' high. A building permit will need to be issued by the County, as well as a sign permit from the state.

There is an existing field approach located near the north edge of the subject property. This is a field approach which also provides access to interior farm fields. Initially, the SD Department of Transportation took issue with this approach and indicated that they wanted it removed and cited the following administrative rule:

70:09:03:03. Permittee to notify the department of changes in traffic characteristics. *The permittee shall contact the department to determine if a new access permit and modifications to the access are required if:*

- (1) The land use served by the access changes;*
- (2) The traffic volume using the access increases by at least 25%; or*
- (3) The truck percentage of total vehicular volume using the access increases by at least 10%.*

The department (DOT) may, without receiving notice from the permittee, initiate such a review and determination, with notice to the permittee.

Staff contacted the applicant to indicate that the elimination of the approach was being requested by DOT. He worked with DOT and clarified that the approach also served the farm field to the west and the DOT has now allowed the approach to remain. Staff has included a copy of the letter from Brooke White, Access Management Engineer, in the file for review and future reference.

The applicant is proposing a new building in the center of the development. This building will be a multi function building and will hold the projector room, concessions and restroom. The restroom shall be constructed to meet all ADA requirements. The applicant will be required to obtain any food license permit, as well as a sales tax license from the state. Furthermore, this is classified as a commercial use and thus the septic system must be reviewed and approved by the S.D. Department of Environment and Natural Resources (DENR). The applicant shall also obtain an On-site Wastewater Disposal Permit from the County prior to construction. The site will be serviced by rural water. The only other building to be constructed appears to be a ticket booth to be located at the end of the south driveway into the facility. All of the structures, including the screens will require a building permit from the county calculated at the commercial rate.

Staff will be recommending that the concession stand remain open and manned while the public is there. The concession stand shall have a first aid kit, fire extinguisher, and capability to contact E911 should some medical or other emergency arise. The concession stand is centrally located between both screens. In addition, the applicant shall have audio equipment able to broadcast any evacuation order due to potential adverse weather.

1) The effect upon the use and enjoyment of other property in the immediate vicinity for the uses already permitted, and upon property values in the immediate vicinity.

The proposed use is an expansion of the existing recreational use already taking place to the south, that of Wild Water West. This recreational destination hosts thousands of visitors during the summer. This site was also the location of the Lighthouse Event, which hosted up to 60,000 attendees per day. Given this fact, a drive-in theater should not significantly impact the property values in the area, nor the predominantly commercial uses to the north and south. This area is not well suited for further residential development due to drainage issues and a high ground water table, so the proposed use is well suited to the general area.

2) The effect upon the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.

The subject property is located ½ mile south of the intersection of a state and county highway. There has been commercial development within this general area. This new use should not impact normal and orderly development in the area.

3) That utilities, access roads, drainage and/or other necessary facilities are provided.

The site will utilize on-site drainage. The parking area will not be hard surfaced and storm water should percolate naturally into the soil. The applicant has shown a network of roads that will extend off of the existing paved parking area for Wild Water West. The applicant has proposed to provide toilet facilities and a place to obtain food and water if needed.

4) That the off-street parking and loading requirements are met.

Basically, the entire drive-in is a parking lot capable of handling expected volumes. The applicant has demonstrated with their site plan that a suitable means of moving traffic into and out the parking area has been designed.

5) That measures are taken to control offensive odor, fumes, dust, noise, vibration, and lighting (inclusive of lighted signs), so that none of these will constitute a nuisance.

The applicant has taken significant steps to reduce dust. All of the major access roads and driveways will be hard surfaced. The speeds of the traffic once inside of the drive-in will be so limited that they should not produce any significant dust. There will be some general traffic noise, but one needs to consider that the site is located adjacent to a major South Dakota highway. The drive-in will utilize an FM sound system, so the movie will be heard over the car radio. There will be no broadcasting of sound through any outdoor speakers. The operating hours will be from dusk to 1:30 a.m. The operation of the drive-in in this time frame is reasonable and should not present a nuisance to the average person.

Recommendation

Staff recommended approval of Conditional Use Permit #12-02 to allow a drive-in theater as a recreational facility with the following conditions:

1. That the applicant follow the site plan that was submitted with application. This shall include the landscaping as shown and the amount of interior roadways to be hard surfaced.

2. The applicant obtain and hold a South Dakota Sales Tax License.
3. All new exterior lighting shall be shoe box style that directs the lighting downward and any lighting on fences shall also be directed downward.
4. The hours of operations shall be between 6 p.m. and 1:30 a.m.
5. Any new septic system must be reviewed and approved by the S.D. Department of Environment and Natural Resources (DENR) and the applicant shall obtain an On-site Wastewater Disposal Permit from the County prior to construction.
6. The concession stand remain open and manned while the public is present. The concession stand shall have a first aid kit, fire extinguisher, and capability to contact E911. The concession stand shall meet all health requirements for food handling required by the state.
7. One (1) illuminated sign shall be allowed up to 300 square feet, not to exceed 15 feet in width and 25 feet in height. The design of the sign shall be approved by the Planning Department. A sign permit from the S.D. DOT and the County shall be obtained before any sign is erected on the subject property.
8. A maximum of two (2) screens not exceeding 65 feet by 105 feet in size shall be allowed and limited to fifteen (15) feet in height (ground to bottom of screen).

Action

A motion was made by Beninga and seconded by Cypher to **approve** Conditional Use Permit #12-02 with stated conditions. The motion passed unanimously.

CUP #12-02 - APPROVED

ITEM 10. CONDITIONAL USE PERMIT #11-56 to allow a contractor storage yard for a landscaping business.

Petitioner: Chris Hood

Property Owner: Jason Klein

Location: West side of Rowena

General Information

Legal Description – Hood’s Addition Tract 1 Section 26-T101N-R48W

Present Zoning – C Commercial

Existing Land Use - Agricultural

Parcel Size – 2 Acres

Staff Report: Ryan Streff

Staff Analysis:

Staff recommended that this item be deferred to the February 27, 2012 meeting.

Action

A motion was made by Beninga and seconded by Cypher to **defer** Conditional Use Permit #11-56 to the February 27, 2012 Planning Commission meeting. The motion passed unanimously.

CUP #11-56 - DEFERRED

Adjourn

A motion was made by Rogen and seconded by Steinhauer to adjourn as the Planning Commission and convene as the Board of Adjustment. The motion passed unanimously.

ZONING BOARD OF ADJUSTMENT

The Planning Commission will convene as the Zoning Board of Adjustment to consider Item 1, requests for a variance.

ITEM 1. VARIANCE #12-01 to exceed the height regulation in the A-1 Agricultural District.

Petitioner: Bernie Opland

Property Owner: Same

Location: 24635 470th Avenue, 4 miles west of Dell Rapids

General Information

Legal Description – NE ¼ (Except W1810' & Except H-1, 2 & 3) 15-T104N-R50W

Present Zoning – A-1 Agricultural

Existing Land Use – Residential/Agriculture

Parcel Size – 48.8 Acres

Staff Report: Scott Anderson

Staff Analysis:

On or about November 7, 2011, staff received a complaint from a resident in the area about the height of an addition to the existing residence on the subject property. Staff then went out to the property and found a “widow’s walk addition” on top of the existing residence. On November 16, 2011, the Building Inspector went to the site and estimated the addition to be approximately 46 feet from grade. The property owner was made aware that the height exceeded the maximum thirty-five (35) feet height allowed in the A-1 Agriculture District for a residence. The applicant began working with staff to address the issue and also indicated that he intended to add an additional 12 feet consisting of a steeple and cross. Staff indicated to Mr. Opland that this could not be done without a variance, and furthermore, the existing addition needed to be removed or a variance obtained. Mr. Opland chose to request a variance.

On January 10, 2012, staff conducted a site visit. The site consists of a 48 acre parcel. There is a small residential subdivision of five (5) lots located to the northwest, a farm to the south and an isolated single residence at the corner of 470th Avenue and 246th Street.

1. That specific circumstances or conditions, such as exceptional narrowness, topography, or siting exists.

No such circumstances exist.

2. That the Variance does not grant a use which is otherwise excluded from that particular district, or diminish or impair property values within the area.

The proposed variance does not grant a use which is excluded from this zoning district. Whether the addition diminishes or impairs the property values in the area is open to debate. The proposed addition certainly towers over the height of a typical residence. Given the distance from any other existing residences, it is unlikely that their property values would be diminished or impaired.

3. That due to the specific circumstance or existing conditions strict application of the Zoning Ordinance would be an unwarranted hardship.

The applicant has full use of his residence. A widow's walk is not vital to the residence and is a decorative and whimsical addition.

4. That the granting of a Variance is not contrary to the public interest and is in harmony with the general purposes and intent of the Zoning Ordinance.

Granting the variance is completely contrary to the public's interest and not in harmony with the Zoning Ordinance. Granting the variance could be interpreted by the public as a move to do what you want to and ask for permission later with the thought that once it's built it's difficult to remove.

5. That because of circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulations and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

The applicant has full use of this property without the addition of a widow's walk, steeple and cross to the top of the existing single family residence. The property has been developed and used for many decades as a farm residence.

In reviewing this aspect of the criteria set forth in the Zoning Ordinance, the applicant can not make a case for a need for a 57 foot tall residence. The existing residence can be used as any other residence within the county without a "widow's walk", steeple and cross. The applicant has full use of the property.

While staff can understand the applicant's desire to add this unique feature to his house, the applicant has failed to provide any evidence of a physical reason why the height should be exceeded. The Board of Adjustment must follow guidelines set forth in Article 21.04 of the Zoning Ordinance which indicates that without a variance no reasonable use of the property exists. Staff cannot support the variance request.

Recommendation:

Staff recommended denial of Variance #12-01 to exceed the maximum height by twenty-two (22) feet.

Public Testimony

Bernie Opland, 24635 470th Avenue, stated that the property has been in his family since 1901 and he is very proud of the house and property. There was a fire that damaged a majority of the interior and he has been working to rebuild the house. He is also put on some additions, one of which will contain a therapeutic pool that will be open to anyone. He stated that he is planning on installing an elevator that will go to the top of the house to use when he gets older. The elevator shaft is already in place.

Mr. Opland stated the enclosed addition on the top of the house is brings him closer to God. He also likes to be enclosed while looking out at the surrounding land. He would also like to put a bell tower and a steeple with a cross on top of the enclosed addition. Mr. Opland asked why he

was limited to 35' in height on his residence when other buildings like his grain bins or a wind tower can be much higher. He stated that he disagreed with the staff report and that he did have a building permit. Mr. Opland also commented on enforcement action that had been taken by the Planning Department which forced him to store his collectable cars indoors. He is unhappy with his past experiences with a former member of the Planning Department.

Scott Anderson stated that all agriculture buildings are exempt but residential buildings are limited to 35 feet in height in the A-1 Agricultural District.

Kim Reit, 47339 248th Street, wanted to know if the widows walk on her house would need a variance. Scott Anderson stated she would need to come and speak with the Planning Office.

Discussion

Commissioner Cypher stated that he would be making a motion to deny because there was no building permit issued for the building on top of the house and the height limit is 35 feet and cannot exceed that.

Commissioner Randall stated that she does not object to the replacing of the widows walk, meaning the platform with railing, but does object to the additional building on top of the residence. She added that Mr. Opland's request did not meet the requirements needed to approve a variance as listed in the zoning ordinance.

Action

A motion was made by Cypher and seconded by Randall to **deny** Variance #12-01 to exceed the maximum height in the A-1 Agricultural District. The motion passed unanimously.

Old Business

No Items.

New Business

Ryan Streff gave a briefing on the Envision 2035 Comprehensive Plan.

Scott Anderson gave the 2011 Year-End Report and allowed Bonnie Duffy, the newest member of the Planning Commission, introduce herself.

County Commission Items

No Items.