

**MINUTES OF THE  
MINNEHAHA COUNTY PLANNING COMMISSION**  
October 28, 2013

A meeting of the Planning Commission was held on October 28, 2013 at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

COUNTY PLANNING COMMISSION MEMBERS PRESENT: Susie O'Hara, Mike Cypher, Becky Randall, Jeff Barth, Mark Rogen and Bonnie Duffy.

STAFF PRESENT:

Scott Anderson and David Heinold - County Planning

The meeting was chaired by Susie O'Hara.

**CONSENT AGENDA**

A motion was made by Commissioner Rogen and seconded by Commissioner Barth to **approve** the consent agenda with Items 2 and 3 moved to the Regular Agenda. The motion passed unanimously.

**ITEM 1. Approval of Minutes – September 23, 2013**

A motion was made by Commissioner Rogen and seconded by Commissioner Barth to **approve** the meeting minutes from September 23, 2013. The motion passed unanimously.

**ITEM 4. CONDITIONAL USE PERMIT #13-057 to exceed 1200 square feet of accessory building area – requesting 2,996 square feet.**

Petitioner: Mary Jo Neisius

Property Owner: same

Location: 47089 257<sup>th</sup> St. approximately 0.25 mile east of Crooks

Staff Report: David Heinold

**General Information**

Legal Description – Tract A Scholten's Addn. NE1/4 NE1/4 Section 11-T102N-R50W

Present Zoning – A1

Existing Land Use - Residential

Parcel Size – 5.01 Acres

**Staff Report:** David Heinold

**Staff Analysis**

The Zoning Ordinance for Minnehaha County regulates the size and location of accessory buildings in Section 12.07 (D). In regards to the A-1 zoning district, the Ordinance states:

*In all Residential Districts, the total area of accessory buildings shall not exceed 1200 square feet unless a conditional use has been approved.*

The petitioner has applied for a conditional use permit to exceed the 1200 square feet of accessory building area. The property is located about a 0.25 mile east of Crooks on 257<sup>th</sup> St. The parcel is located in Tract A of Scholten's Addn. NE1/4 NE1/4 Section 11-T102N-R50W within Benton Township.

The petitioner would like to construct a 2,130 square foot accessory structure in addition to an existing 866 square foot detached garage on her five acre lot in Scholten's Addition. The petitioner's requested total building area, 2,996 square feet, is relatively comparable with other accessory buildings in the immediate area. The largest existing total accessory building area within close proximity is 9,408 square feet, but mainly consists of agricultural accessory buildings. A neighboring property owner, 47095 257<sup>th</sup> St., constructed a 2,160 square foot accessory structure in 2004. Currently, the total accessory building area for the neighboring property to the east of the petitioner's property is 4,240 square feet.

Two other properties within close proximity of the petitioner's property have accessory structures that exceed 1200 square feet and are relatively comparable to the petitioner's requested accessory building area of 2,996 square feet. In 1997, the property owner at 25680 471<sup>st</sup> Ave. obtained a permit for a 2,400 square foot accessory structure. In 1981, the property owner at 47118 257<sup>th</sup> St. constructed a 2,800 square foot accessory structure.

**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 construction of the proposed accessory building should have no impact on further construction or development within the general area. The building will only be used for the owner's personal storage, and no commercial or business activities will be allowed. This use will not affect the residential uses or agricultural land in the area.

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

The accessory structure may only be used for residential purposes, no commercial or business activities are allowed. Given the size of the other larger accessory structures in the immediate vicinity of the petitioner's property, a 2,130 sq. ft. accessory structure would be congruent with the land composition.

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

Existing access is already provided via the driveway off of 257<sup>th</sup> St. No further infrastructure will be required due to the construction of the accessory structure.

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

No on-street parking will be needed with the supplemental area for parking as a result of residential activities. No commercial or business parking will be allowed.

**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.**

No offensive nuisances shall be permitted at any time during use of the proposed accessory structure.

**Recommendation**

Staff found that the proposed building size conforms to the general sizes of other accessory buildings in the area. Staff recommended **approval** of conditional use permit #13-57 with the following conditions:

- 1) That the total accessory building square footage shall not exceed 2,996 square feet.
- 2) That the accessory building shall not exceed 35 feet in height.
- 3) That a building inspection is required to determine that the building does not exceed 2,130 square feet measured from the outside perimeters.
- 4) That a building permit is required.
- 5) That the building shall be an accessory use to the continued use of the property as a residential lot.
- 6) That only personal residential storage shall be allowed in the building and no commercial uses or commercial storage will be allowed.
- 7) That all outdoor lighting shall be of a full cutoff and fully-shielded design to prevent direct spillage of light beyond the property boundaries.
- 8) That the Planning & Zoning Department reserves the right to enter and inspect the accessory building at any time, after proper notice to the owner, to ensure that the

property is in compliance with the conditional use permit conditions and the Minnehaha County Zoning Ordinance.

**ACTION**

A motion was made by Commissioner Rogen and seconded by Commissioner Barth to **approve** Conditional Use Permit #13-057. The motion passed unanimously.

**Conditional Use Permit #13-057 - Approved**

## **REGULAR AGENDA**

A motion was made by Commissioner Rogen and seconded by Commissioner Barth to **approve** the regular agenda. The motion passed unanimously.

### **ITEM 2. CONDITIONAL USE PERMIT #13-055 to exceed 1200 square feet of accessory building area – requesting 3,510 square feet.**

Petitioner: David W. Hosley

Property Owner: same

Location: 47204 256<sup>th</sup> St. approximately 1.5 miles northeast of Crooks

Staff Report: David Heinold

#### **General Information**

Legal Description – Lot 4, Assen’s Subdivision SW1/4 SW1/4 Section 31-T103N-R49W

Present Zoning – A1

Existing Land Use - Residential

Parcel Size – 2.09 Acres

**Staff Report:** David Heinold

#### **Staff Analysis**

The Zoning Ordinance for Minnehaha County regulates the size and location of accessory buildings in Section 12.07 (D). In regards to the A-1 zoning district, the Ordinance states:

*In the A-1 and RC Districts, the total area of accessory buildings shall not exceed 1200 square feet when such buildings are located in a subdivision of more than four (4) lots unless a conditional use permit has been approved.*

The petitioner has applied for a conditional use permit to exceed the 1200 square feet of accessory building area. The property is located about 1.5 miles northeast of Crooks on 256<sup>th</sup> St. The parcel is located on Lot 4 of Assen’s Subdivision SW1/4 SW1/4 Section 31-T103N-R49W.

The petitioner would like to construct a 2,646 square foot accessory structure, remove two 192 square foot buildings, and keep an 864 square foot building. The 864 square foot accessory building will be moved and the requested 2,646 square foot accessory building will be placed in that location. The petitioner’s requested total building area, 3,510 square feet, is relatively comparable with other accessory buildings in the immediate area. A neighboring property owner, 47210 256<sup>th</sup> St., constructed a 1,890 square foot accessory structure in 2006. The neighboring property owner to the east of the petitioner’s property applied for a Conditional Use Permit to exceed 1200 square feet in accessory building area, requesting 3,060 square feet.

Two other properties within close proximity of the petitioner’s property have accessory structures that exceed 1200 square feet and are relatively comparable to the petitioner’s requested accessory building area of 3,510 square feet. In 1999, the property owner at 47222 256<sup>th</sup> St. obtained a permit for a 1,800 square foot accessory structure. In 1978, the property owner at 25576 472<sup>nd</sup> Ave. constructed a 2,160 square foot accessory structure.

**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 construction of the proposed accessory building should have no impact on further construction or development within the general area. The building will only be used for the owner's personal storage, and no commercial or business activities will be allowed. This use will not affect the residential uses or agricultural land in the area.

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

The accessory structure may only be used for residential purposes, no commercial or business activities are allowed. Given the size of the other larger accessory structures in the immediate vicinity of the petitioner's property, a 2,646 sq. ft. accessory structure would be congruent with the land composition.

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

Existing access is already provided via the driveway off of 256<sup>th</sup> St. No further infrastructure will be required due to the construction of the accessory structure.

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

No on-street parking will be needed with the supplemental area for parking as a result of residential activities. No commercial or business parking will be allowed.

**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.**

No offensive nuisances shall be permitted at any time during use of the proposed accessory structure.

**Recommendation**

Staff found that the proposed building size conforms to the general sizes of other accessory buildings in the area. Staff recommended **approval** of conditional use permit #13-55 with the following conditions:

- 1) That the total accessory building square footage shall not exceed 3,510 square feet.
- 2) That the accessory building shall not exceed 35 feet in height.
- 3) That a building inspection is required to determine that the building does not exceed 2,646 square feet measured from the outside perimeters.
- 4) That a building permit is required.
- 5) That the building shall be an accessory use to the continued use of the property as a residential lot.
- 6) That only personal residential storage shall be allowed in the building and no commercial uses or commercial storage will be allowed.

- 7) That all outdoor lighting shall be of a full cutoff and fully-shielded design to prevent direct spillage of light beyond the property boundaries.
- 8) That the Planning & Zoning Department reserves the right to enter and inspect the accessory building at any time, after proper notice to the owner, to ensure that the property is in compliance with the conditional use permit conditions and the Minnehaha County Zoning Ordinance.

**PUBLIC TESTIMONY**

David Hosley, 47204 256<sup>th</sup> St., stated that he is requesting a Conditional Use Permit to construct a heated storage building to store personal belongings inside because he does not like things to be left outside. He said that the small horse barn will be used as a woodworking shop. He added that the reason he is requesting two separate shops is because sawdust and other things do not mix. All remaining public questions have been answered.

**ACTION**

A motion was made by Commissioner Cypher and seconded by Commissioner Rogen to **approve** Conditional Use Permit #13-055. The motion passed unanimously.

**Conditional Use Permit #13-055 - Approved**

**ITEM 3. CONDITIONAL USE PERMIT #13-056 to transfer 1 building eligibility from the SW1/4 to TR 1 Nelson's Addition SE1/4SW1/4 Section 18-T101N-R47W.**

Petitioner: Harley D. Skyberg

Property Owner: same

Location: 48438 265<sup>th</sup> St. approximately 5 miles east of Sioux Falls

Staff Report: Scott Anderson

**General Information**

Legal Description – Tract 1 Nelson's Addn. SE1/4 SW1/4 Section 18-T101N-R47W

Present Zoning – A1

Existing Land Use - Residential

Parcel Size – 2.88 Acres

**Staff Report:** Scott Anderson

**Staff Analysis:** The applicant wants to transfer a building eligibility from the SW ¼ of Section 18, T101N, R47W to Tract 1 (Ex E140') of Nelson's Addition in the SE ¼ SW ¼ of Section 18, T101N, R47W. The applicant has indicated that moving the eligibility would allow for the residential use of an existing platted lot with accessory structures but no residence. The lot was created but no eligibility assigned to it.

On October 4, 2013, staff conducted a site visit. There are no animal confinement operations near the location of the transfer. The transfer is located in an area with several residential lots to the east, west and south. There are two large accessory structures on the subject property. A 24' by 70' accessory structure was constructed in 1994 and in the following year a 32' by 100' accessory structure was built. In 2012 there was a fire in the 24' x 70' structure and the applicant obtained a building permit to remodel and repair that structure.

**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.**

A right-to-farm notice covenant should be required to notify potential buyers to the realities of locating in an agricultural area.

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

The transfer of the building eligibility does not increase the number of dwelling units allowed in this section.

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

Rural water is available in the area and a waste water system will be utilized. The proposed building site will use a driveway that will come off of 265<sup>th</sup> Street.

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

Off-street parking requirements will be provided for once a single-family residence is constructed on the subject property.

**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 proposed conditional use will not cause odor, fumes, dust, noise, vibrations or lighting in any amounts that would constitute a nuisance.

**Recommendation:** Staff found this conditional use permit request to be consistent with density zoning and recommended **approval** of Conditional Use Permit #13-56 with the following condition:

1. A right-to-farm notice covenant shall be placed on the deed prior to the issuance of a building permit for a single family residence.

**PUBLIC TESTIMONY**

Staff noted that the petitioner may be requesting to transfer a building eligibility to bring property into compliance, as a quasi-residence on the property currently exists. Staff attempted to speak with the petitioner to inform him that he would not be able to construct more than one single-family residence until the property is brought into full compliance, but was unable to speak with Mr. Skyberg.

Commissioner Cypher added that there may be a condition stating the property must be brought into compliance before approval. Staff noted that neighbors have provided mixed messages about whether or not the petitioner rented the building out. The property has no building eligibilities and has two accessory structures located there. One of the buildings on the lot has an attached garage and was remodeled a year ago.

Gary Skyberg stated that they intend to build a single-family house at the rear of the lot for family to reside on the property. Gary noted that there is not a residence on the property at this time. The building that staff reported about is being used for storage. The building does have a bathroom. He said that there has been people that have stayed there temporarily. He is aware that he is not allowed to have a single-family residence and rent the building on the same property.

Jill Berg, 48436 265<sup>th</sup> St., stated that the petitioner chose to sell the one acre with the building eligibility. Therefore, he knew that he could not live on the remaining acreage. Since the petitioner has lived on the property, there has been a meth lab fire in the garage structure closest to the road and a registered sex offender living there when a residence is not allowed on the property. The petitioner stated that there was no animal shelter located on the property; however, pigs have been living in a shed at the rear of the lot.

She noted that a mechanic has been working day and night in a pole barn on the property. They have been revving the engines of race cars at 6 o'clock on a Sunday morning. Recently, we found out that the petitioner rented 3 acres of our property as his own property.

Bruce Lee, 48448 265<sup>th</sup> St., is concerned that everything should be done according to regulation and followed up on. He stated that the meth lab fire did occur in the building closest to the road. He felt rather unnerved to find out that a registered sex offender was living on the property and neighbors were not directly made aware of the situation. He added that there was a camper that they were living in on the property and an attempt was made to trench into an existing septic system. He understands that the location of the petitioner's request for the transfer of building eligibility, but they are concerned about the situation and want to make sure everything is done according to regulation.

Gary Skyberg stated that he does not understand who Jill Berg is talking about when she mentioned that they had let him use their 3 acres of property for his sheep. He added that he is not sure who she is talking about that he rented the property to. The registered sex offender that was a friend of mine that was put in jail for awhile needed a place to stay, so he let him stay in his camper on the property. Twenty five years ago, he was not aware that he was a registered sex offender until it was brought up to him by another friend.

The mechanic, who started working at Nordstrom's during the day last year, is a friend who helped him and worked for him last summer. He said that the mechanic is not hired on a for-hire basis and works on three or four of his own personal vehicles. They have been working personal vehicles and farm tractors. He stated that the Fire Chief from Valley Springs stated that the meth lab fire was an electrical fire. They were shown where the fire was started and it was declared an electrical fire. He added that he does not deny that there was meth on the property, but if a fire did occur it was nothing he knew about.

When asked about the race cars out at morning and night, he stated that he has not had race cars on the property. He denied the statement that race cars were producing loud noises early in the morning and late at night. He added that if there was vehicle on the property it was inside the shop.

Dwayne Berg, 48436 265<sup>th</sup> St., stated that he was asked about a mechanic that works on vehicles by an anonymous gentleman who drove up in his driveway. The individual said that he was looking for a mechanic and did not indicate a name, so Dwayne assumed he was out here to get work on his vehicle done. He stated that he does not know who the mechanic is, but the only mechanic he knows is the next door neighbor. He stated that he had a farmer approach him to apologize for paying rent to the petitioner that was actually his property.

### **ACTION**

A motion was made by Commissioner Barth and seconded by Rogen to **defer** action until staff has discussed conditions of approval and completed an inspection of the property. The motion passed unanimously.

### **Conditional Use Permit #13-056 - Deferred**

**ITEM 5. RECALL CONDITIONAL USE PERMIT #10-34 to allow a contractor's shop and storage yard.**

Petitioner: James Hofer

Property Owner: same

Location: 46194 260<sup>th</sup> St. approximately 0.5 mile south of Hartford

Staff Report: Scott Anderson

**General Information**

Legal Description – Tract 1 Benson's Addn. SE1/4 SE1/4 Section 20-T102N-R51W

Present Zoning – A1

Existing Land Use - Residential

Parcel Size – 3.45 Acres

**Staff Report:** Scott Anderson

**Staff Analysis:** On July 26, 2010, the Planning Commission approved Conditional Use Permit #10-34 with the following conditions:

- 1) The lot shall adhere to the submitted site plan and application dated 6-15-10.
- 2) If the petitioner decides to change the layout of the property (buildings, holding tank, storage yard or parking) a new site plan shall be submitted to the Planning Department for approval.
- 3) The fencing shall be a minimum of 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.
- 4) A minimum of five (5) hard surfaced parking spaces be provided for each unit or tenet. In the event that a contractor or tenet has more than five (5) employees additional hard surfacing will be required. All other parking and driving surfaces on the property shall be hard-surfaced with the exception of the overflow parking area.
- 5) 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.
- 6) No unlicensed vehicles, inoperable or partially dismantled vehicles or equipment, or parts shall accumulate on the property.
- 7) Setbacks for the property shall conform to all requirements stated in *Article 7.00 I-1 Light Industrial District*.
- 8) All signage shall comply with the zoning ordinance requirements stated in *Article 16.00 On-Premise Signs*.
- 9) In the event that part of the building is leased to other individuals a conditional use permit shall be obtained if the type of use changes and or does not comply with the terms of this CUP #10-34.
- 10) A building permit is required for the contractors shop and any signage placed on the property.

Approximately one year later, staff became aware that Mr. Hofer was storing equipment on the property without a screening fence. On July 13, 2011, staff contacted the applicant by phone to explain the screening fence requirement. Mr. Hofer indicated that it would be installed. Since

July of 2011, staff has contacted Mr. Hofer eighteen (18) times in regard to having the required screening fence installed. A copy of the attempts is attached for your review. The last attempt was a letter sent to Mr. Hofer on August 19, 2013 in which it was indicated that Conditional Use Permit #10-34 would be recalled for review at the October 2013 meeting if the fence was not installed by September 27, 2013. This letter prompted a call from Mr. Hofer and once again he indicated that he would have the fence installed. Mr. Hofer continues to use this property for the storage of building material without screening it.

On October 4, 2013, staff conducted a site inspection. It appeared that fencing post had been delivered to the property.

Article 19.11 of the Minnehaha County Zoning Ordinance allows the Planning Director to recall any conditional use permit to the Planning Commission for review and action when a finding is made that the terms, conditions or requirements of the conditional use permit have not been complied with. Specifically, condition #3 requiring a screen fence is not being met. The property owner has demonstrated a history of promising to have the fence installed and then not following through. Staff has worked with him for over two (2) years to no avail. Based on these facts, it is the findings of Planning Director that conditions of Conditional Use Permit #10-34 are not being met and therefore recall this Conditional Permit to the Planning Commission for review.

Given the long history of attempting to bring this property into compliance with the conditions of approval with no avail, staff recommends that Conditional Use Permit #10-34 be revoked. The applicant will then be given notice to remove all materials from the site.

**Recommendation:** Staff recommended that Conditional Use Permit #10-34 be **revoked**.

### **PUBLIC TESTIMONY**

The petitioner stated that he has been having some financial difficulties in completing the Conditional Use Permit requirement. He hired a contractor, but he couldn't do the job. He explained that he had to do the job himself, but could not get it done. When asked about a timeline for fulfillment of the requirement, he said that he could get it done within a month.

Commissioner Cypher asked, 720 days and you didn't have 2 days to put up the fence?

The petitioner stated that he has been busy working out of town a lot and that he couldn't do it.

Commissioner Cypher added, "and we are supposed to just say oh, okay, that's fine." He proceeded to mention that there is absolutely no reason for the noncompliance with the Conditional Use Permit requirement regarding erecting a 90% opaque fence or screen over the past two years.

Commissioner Barth agreed that this is no different than the check is in the mail; this needs to get done as soon as possible.

### **ACTION**

A motion was made by Commissioner Cypher and seconded by Commissioner Rogen to **amend** that Conditional Use Permit #10-34 be revoked on November 25, 2013 unless petitioner meets all conditions of approval. The motion passed unanimously.

### **Conditional Use Permit #10-034 - Amended**