

**MINUTES OF THE JOINT MEETING
MINNEHAHA COUNTY & SIOUX FALLS PLANNING COMMISSIONS
August 28, 2017**

A joint meeting of the County and City Planning Commissions was scheduled on August 28, 2017 at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

COUNTY PLANNING COMMISSION MEMBERS PRESENT: Doug Ode, Becky Randall, Paul Kostboth, Mike Ralston, and Jeff Barth.

CITY PLANNING COMMISSION MEMBERS PRESENT: Sean Ervin, John Paulson, Sharon Chontos, Andi Anderson, and Katherine Fiegen.

STAFF PRESENT:

Scott Anderson, David Heinold, and Kevin Hoekman - County Planning
Diane de Koeyer – City Planning
Maggie Gillespie – States' Attorney

The County Planning Commission Chair was presided over by Temporary Chair Becky Randall. The City Planning Commission was chaired by Sean Ervin.

Planning Commission Chair Becky Randall called the joint City of Sioux Falls and Minnehaha County Planning Commission meeting to order at 7:09 p.m.

Consent Agenda

No items were placed on the consent agenda.

ITEM 1. Approval of Minutes – July 24, 2017

As part of the consent agenda, a motion was made for the County by Commissioner Kostboth and seconded by Commissioner Ode to **approve** the meeting minutes from July 24, 2017. The motion passed unanimously. The same motion was made for the City by Commissioner Paulson and seconded by Commissioner Chontos to **approve** the meeting minutes from July 24, 2017. The motion passed unanimously.

ITEM 2. CONDITIONAL USE PERMIT #17-54 to exceed 1,200 square feet of total accessory building area – requesting 2,376 sq. ft. on the property legally described as Tract 2, Andy’s Acres, NE1/4 SW1/4, Section 23-T102N-R49W.

Petitioner: Scott Zwak

Property Owner: same

Location: 47646 Slip Up Creek Rd. - Approximately 1.5 miles north of Sioux Falls

Staff Report: Scott Anderson

This would allow 2,376 square feet of total accessory building area.

General Information:

Legal Description – Tract 2, Andy’s Acres, NE1/4 SW1/4, Section 23-T102N-R49W

Present Zoning – A1 Agriculture District

Existing Land Use – residential

Parcel Size – .74 acres

Staff Report: Scott Anderson

Staff Analysis: The Joint Zoning Ordinance for Minnehaha County and Sioux Falls regulates the size and location of accessory buildings in Section 125.07. 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 1,200 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 applicant has applied for a conditional use permit to exceed 1,200 square feet of accessory building area on his $\frac{3}{4}$ acre lot located in Andy’s Acres. This subdivision of thirty-five houses is located approximately $\frac{3}{4}$ of a mile north of the interchange of Interstate 90 and 229. The development is approximately 1 mile from the city limits. The applicant would like to construct a 30 foot by 60 foot structure with a 12 foot by 24 foot bump out for a total of 2,376 square feet. The applicant provided a site plan which shows the proposed accessory structure located behind the residence on the east side of the lot. The site plan is included for review.

The lot adjacent to the subject property has 2 accessory structures totalling 1,360, which were constructed prior to 2001 when the County and Sioux Falls adopted the restrictions to the size of accessory buildings in the A-1 zoning district.

In 2009, the property owner at 25915 N. Cloudas Avenue requested a conditional use permit to build a 2,796 square foot accessory structure. The Joint Planning Commission denied CUP #09-74 to allow the larger accessory structure. 25915 N. Cloudas Avenue is approximately 7 lots away to the west. In 2010, the property owner at 47638 Slip Up Creek Road requested a conditional use permit to allow 1,320 square feet of accessory structure. This conditional use

permit (CUP #10-02) was approved. The Planning Commissions have indicated that large accessory structures are not compatible in this subdivision.

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 applicant's planned use of the building should not negatively affect property values. The potential for this large building to be retrofitted for a commercial business in the future does exist, which would have a negative impact on the residential neighborhood.

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

This request if approved would be the first in the development to greatly exceed the 1,200 square foot accessory building area. A larger building would not be congruent with the neighborhood composition.

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

Utilities are provided in the neighborhood. Slip Up Creek Road is a paved road and maintained by Mapleton Township.

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

The addition of the accessory building would not require any additional parking.

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.

A storage building should not constitute any odor, fumes, dust, noise, vibration or lighting at the level of a nuisance.

6) Health, safety, general welfare of the public and the Comprehensive Plan.

The proposed accessory building should have no effect on the health, safety, and general welfare of the public.

An accessory building of this size is not in character with the neighborhood. It is much larger than other accessory structures within the development and the Planning Commission has denied similar requests in the past. The lot size is limited at less than $\frac{3}{4}$ of an acre. Staff would support allowing an accessory building to be 1,360 square feet, which is the size of the total accessory buildings on the lot directly to the east of the subject property.

If the Joint Planning Commission feels the proposed structure should be approved, staff suggest that conditions be placed on the permit. Suggested conditions are as follows:

- 1.) That the total accessory building square footage shall not exceed 1,360 square feet.
- 2.) That a building permit is required prior to construction of the accessory building.

- 3.) An inspection must be made of the proposed new accessory building to ensure that the total floor area of the building does not exceed 1,360 square feet.
- 4.) Only personal residential storage shall be allowed in the building, and no commercial uses or commercial storage will be allowed at any time.
- 5.) All outdoor lighting shall be of a full cutoff and fully-shielded design to prevent direct spillage of light beyond the property boundaries.
- 6.) 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 full compliance with the conditional use permit conditions of approval and the Minnehaha County Zoning Ordinance.

Recommendation: Staff recommends **denial** of Conditional Use Permit #17-54 to allow a 2,376 square foot accessory structure.

PUBLIC TESTIMONY

Scott Anderson, Planning Director, presented the staff report and recommendation.

Commissioner Paulson noted that there was discussion about changing the ordinance to allow 2,400 square feet of accessory building in which case this structure may be permissible if the ordinance were to change.

Commissioner Ode clarified with staff that the size of the parcel is 0.37 acres.

Scott Zwak, the petitioner, 47646 Slip Up Creek Road, spoke about the request. Mr. Zwak proposed that the request could be reduced to 2088 square feet as the 12 foot by 24 foot building that exists on the property can be removed if necessary. He noted that the neighbors he talked with would rather see a shed than various items stored outside. Commissioner Barth asked the petitioner if a smaller building would work. Mr. Zwak responded that it would work except the proposed building is sized to hold all his stuff.

Commissioner Ode asked if any plumbing is planned for the shed. Mr. Zwak responded that the structure will be slab on grad with no plumbing.

John Beck, 47645 Surrell Street, spoke in possession to the request. Mr. Beck explained that he lived kitty corner to the subject property, and that if approved 2,400 square feet accessory building space would set a precedence for future buildings in the subdivision. Commissioner Barth asked if removing the smaller building would make the proposal more acceptable. Mr. Beck replied that the one building would be better but it would still set a precedence in the area.

Tony Lee, 47563 255th Street, agreed the denial recommendation and noted that the size of accessory building space should primarily be based on the adjacent property owners and how does it affect the neighborhood.

DISCUSSION

Commissioner Kostboth began discussion by suggesting for the Commission to find a building size that may be appropriate to fit the area and provide the applicant space to meet his goals.

Commissioner Barth confirmed that 2,000 square feet would be a significant size to work for the petitioner.

Commissioner Anderson stated that the accessory building space should not be increased at this time to take into account neighbors opinions.

Commissioner Paulson asked for further discussion regarding the possibility of increasing the accessory building size requirement in the ordinance. Scott Anderson, planning staff, noted that city planning staff indicated a desire to change because there have been too many requests. Scott Anderson added that if the request is denied and the ordinance is changed, the petitioner would be able to obtain a building permit for the larger building at that time. Commissioner Paulson further asked how staff decided to include 1,360 square feet in the possible conditions if the application is approved. Scott Anderson responded that 1,360 is the size of accessory building space on the neighboring property.

Commissioner Kostboth clarified with staff that the alternate recommendation for building size included all accessory buildings and not just the proposed structure.

Commissioner Barth discussed that people seem to have a lot of stuff and want a place to put it. Commissioner Barth made a motion for the county planning commission to allow 2,000 square feet of accessory buildings with suggested conditions. Commissioner Ode seconded the motion. The motion passed unanimously.

Commissioner Paulson made the same motion for the city planning commission. The motion was seconded by Commissioner Anderson to allow further discussion. Commissioner Anderson noted that she would hold firm with what she said earlier and that a larger accessory building should not be approved because of too much stuff. The motion failed with Commissioner Paulson voting yes, and Commissioners Anderson, Feigen, and Chontos voted no. The motion failed.

Commissioner Chontos motioned to approve the request with 1,360 square feet of accessory building with staff suggested conditions. Commissioner Anderson seconded the motion. The motion passed with Commissioners Anderson, Feigen, and Chontos voting yes, and Commissioner Paulson voting no.

ACTION

A motion was made for the County by Commissioner Barth and seconded by Commissioner Ode to **approve** CUP #17-54 with the following conditions:

- 1.) That the total accessory building square footage shall not exceed 2,000 square feet.
- 2.) That a building permit is required prior to construction of the accessory building.
- 3.) An inspection must be made of the proposed new accessory building to ensure that the total floor area of the building does not exceed 2,000 square feet.
- 4.) Only personal residential storage shall be allowed in the building, and no commercial uses or commercial storage will be allowed at any time.
- 5.) All outdoor lighting shall be of a full cutoff and fully-shielded design to prevent direct spillage of light beyond the property boundaries.
- 6.) 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 full compliance with the conditional use permit conditions of approval and the Minnehaha County Zoning Ordinance.

The motion for the county planning commission passed unanimously.

A motion was made for the City by Commissioner Anderson and seconded by Commissioner Chontos to **approve** CUP #17-54 with the following conditions:

- 1.) That the total accessory building square footage shall not exceed 1,360 square feet.
- 2.) That a building permit is required prior to construction of the accessory building.
- 3.) An inspection must be made of the proposed new accessory building to ensure that the total floor area of the building does not exceed 1,360 square feet.
- 4.) Only personal residential storage shall be allowed in the building, and no commercial uses or commercial storage will be allowed at any time.
- 5.) All outdoor lighting shall be of a full cutoff and fully-shielded design to prevent direct spillage of light beyond the property boundaries.
- 6.) 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 full compliance with the conditional use permit conditions of approval and the Minnehaha County Zoning Ordinance.

The motion passed for the city planning commission with Commissioners Anderson, Feigen, and Chontos voting yes, and Commissioner Paulson voting no.

Since the both planning commissions voted to grant approval but with different conditions, the CUP request must be heard by the joint meeting of the County Commission and City Council.

CUP #17-54 – To be heard by Joint City Council and County Commission on September 26, 2017.

ITEM 3. CONDITIONAL USE PERMIT #17-59 to exceed 1,200 square feet of total accessory building area – requesting 3,000 sq. ft. on the property legally described as W165’ E495’ (Ex. H-2 & P-1 & Ex. Rocky Ridge Addn.), NW1/4 NE1/4, Section 22-T101N-R50W.

Petitioner: Alex Augustad

Property Owner: same

Location: 7309 W. 12th St. West Sioux Falls

Staff Report: Kevin Hoekman

This would allow 3,000 square feet of total accessory building area.

General Information:

Legal Description – W165’ E495’ (Ex. H-2 & P-1 & Ex. Rocky Ridge Addn.), NW1/4 NE1/4, Section 22-T101N-R50W

Present Zoning – A1 Agriculture

Existing Land Use – residential acreage

Parcel Size – 1.52 acres

Staff Report: Kevin Hoekman

Staff Analysis:

The property is located approximately one quarter (1/4) mile west of the intersection of West 12th Street and Sertoma Avenue. The parcel is one of several residential lots in a small subdivision that is surrounded by city limits. The site has driveway access onto W. 12th Street.

The petitioner would like to construct a 2,500 square foot accessory building. The proposed structure would be in addition to two small buildings to add up to the total request of 3,000 square feet. The proposed accessory building is planned to be located on the west side of the parcel and south of the dwelling. No driveway currently accesses that portion of the property. It is likely that a new driveway access would not be approved and the existing driveway would need to be shared. The site plan indicates that the accessory structure will meet the minimum front and side yard setback requirements. The minimum side yard setback for an accessory building is three feet. The proposed side yard setback is five feet.

All of the subject property is located within a regulatory floodplain. Much of the property is also located in the regulatory floodway, including where the proposed accessory building is located on the site plan. Development in the floodway is greatly restricted, and the construction of an accessory building or any other development in the floodway would be undesirable. There is some space on the property to place a large accessory building, but the structure would still be located in the floodplain. If approved, the proposed structure must meet minimum requirements of Minnehaha County Floodplain Ordinance. Compliance would include the lowest floor elevation must be at or above the base flood elevation and other requirements. Floodplain

development regulations differ between the county and the city, and the future annexation of this property may create a non-conforming structure that does not comply with city regulations.

The area around this property is primarily suburban style subdivisions within Sioux Falls City limits. Because of the typical lot size in the area, few residential properties have large accessory buildings. A property approximately ¼ mile to the west of the proposed building has about 2600 square feet of accessory building space. It appears like the buildings of this neighboring property were built as farm accessory buildings prior to the ordinance that limits accessory building size in subdivisions. Other large buildings in the area are associated with the gravel quarries to the north of 12th street. The planning commission has typically limited accessory building to the size of the largest nearby accessory area. The largest nearby total accessory building is 2,600 square feet. If the accessory building is approved a limit to a total area of 2,600 square feet would be a likely size to limit the total accessory building area.

In 2015, a similar CUP request for a larger accessory building was denied by the joint Sioux Falls and Minnehaha County Planning Commission. The 2015 request was located approximately ¼ mile southeast of the current request, and the former request was denied for 3,600 square foot request with a 2,600 square foot staff recommendation.

Conditional Use Permit Criteria:

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 would have little impact on surrounding existing uses. The site is located a short distance across an unnamed tributary from the nearest residential subdivision within Sioux Falls. The driveway access is directly onto a busy arterial street for Sioux Falls which is lined by a mix of commercial, residential, and industrial uses; some uses are annexed into the city and others are not. If approved, the accessory structure shall not be used as a commercial operation at any time.

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 in an area that has experience many changes that will likely continue into the future. The proposed accessory building would be one of the larger accessory buildings in the area. More large accessory buildings may create a precedent to follow if other requests are made for similar size structures. Locating a structure in or near the floodway has the high likelihood of backing water up in the event of a flood and increasing potential flood damage for structures upstream.

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

All needed infrastructure is in place. The proposed structure should use the existing driveway to prevent another access points onto a busy road.

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

No off-street parking will be needed as a result of personal activities in this accessory building. No commercial or business parking will be allowed at any time.

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. The use of lighting should be directed downward on to the property in order to prevent light pollution off site.

6) Health, safety, general welfare of the public and the Comprehensive Plan.

The proposed accessory building is large for the area and located within a floodplain. The property is a small acreage in a subdivision of other residential acreages surrounded by the City of Sioux Falls. In 2015, a similar request was denied by the Joint Planning Commission. The proposed building may also lead as a precedent for future large buildings in the neighborhood.

If the Joint Planning Commission feels the proposed structure should be approved, staff suggests that conditions be placed on the permit. Below are some suggested conditions.

- 1.) That the total accessory building square footage shall not exceed 2,600 square feet.
- 2.) That a building permit is required prior to construction of the accessory building.
- 3.) That the structure is not placed within the regulatory floodway, and that a floodplain development permit is obtained prior to obtaining a building permit.
- 4.) That the accessory building shall not exceed 35 feet in height and meet the setback requirements for the zoning district.
- 5.) That an inspection be made on the proposed new accessory building to ensure that the square feet of the floor area of the building does not exceed 2,600 square feet.
- 6.) That only personal residential storage shall be allowed in the building and no commercial uses or commercial storage will be allowed at any time.
- 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 full compliance with the conditional use permit conditions of approval and the Minnehaha County Zoning Ordinance.

Recommendation:

Staff finds that the proposed accessory building may create a hazard in the floodplain and create a precedent of large buildings in an area surrounded by city limits. Staff recommends **denial** of Conditional Use Permit #17-59.

PUBLIC TESTIMONY

Kevin Hoekman, planning staff, presented the staff report and recommendation. Commissioner

Randall questioned how much difference exists between the city and the county floodplain ordinances. Kevin explained that Sioux Falls' floodplain ordinance requires a freeboard or 2 feet where the lowest floor elevation of a structure must be at least 2 feet higher than the base flood elevation of the flood map. Commissioner Barth raised concern that building a structure two feet above the flood level would cause water to back up. Kevin explained that that floodwater backup is the primary reason for not allowing development in the floodway, but development can build up in the floodplain that is not part of the floodway. Commissioner Kostboth asked to see where the building is proposed in relationship to the floodplain. Kevin pointed out the location on the map.

Alex Augustad, the petitioner at 7309 W. 12th Street, spoke to the proposal. He presented a sketch proposal of where the building might go if approved. The new proposal includes removing the two smaller sheds on the property. Mr. Augustad noted that he met with city engineering to discuss sanitary sewer hookups, and he would be willing to do that if his project needs it. He added that he had spoken to his neighbors and found no objections to his proposal.

Commissioner Barth asked Alex if he was willing to meet the city ordinance. Alex said he would be willing to do that.

Commissioner Anderson confirmed with City planning staff that a 2,400 square foot building would not be a non-conforming structure when the building is annexed.

ACTION

A motion was made for the County by Commissioner Barth and seconded by Commissioner Kostboth to **approve** CUP #17-59 with the following conditions:

- 1.) That the total accessory building square footage shall not exceed 2,400 square feet.
- 2.) That a building permit is required prior to construction of the accessory building.
- 3.) That the structure is not placed within the regulatory floodway, and that a floodplain development permit is obtained prior to obtaining a building permit.
- 4.) That the accessory building shall not exceed 35 feet in height and meet the setback requirements for the zoning district.
- 5.) That an inspection be made on the proposed new accessory building to ensure that the square feet of the floor area of the building does not exceed 2,400 square feet.
- 6.) That only personal residential storage shall be allowed in the building and no commercial uses or commercial storage will be allowed at any time.
- 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 full compliance with the conditional use permit conditions of approval and the Minnehaha County Zoning Ordinance.

- 9.) The accessory building must meet the floodplain requirements of the City of Sioux Falls.

The motion passed unanimously.

The same motion was made for the City by Commissioner Chontos and seconded by Commissioner Paulson to **approve** CUP #17-59. The motion passed unanimously.

CUP #17-59 – Approval with Conditions.

Old Business

None.

New Business

Scott Anderson asked for comments and direction from the planning commissions regarding the possibility of increasing the size of allowable accessory building size. Diane DeKoyer added that the city planning staff has discussed the issue and would be supportive of raising the allowable building size to 2,400 square feet. The commissions discussed possible thresholds for when the size of the property would allow larger building.

Adjourn

A motion was made for the County to **adjourn** by Commissioner Kostboth and seconded by Commissioner Ralston. The motion passed unanimously. The same motion was made for the City to **adjourn** by Commissioner Chontos and seconded by Commissioner Feigen. The motion passed unanimously.

The meeting was **adjourned** at 8:00 pm.