

**MINUTES OF THE
MINNEHAHA COUNTY ZONING BOARD OF ADJUSTMENT**
April 25, 2016

A meeting of the Zoning Board of Adjustment was held on April 25, at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

COUNTY ZONING BOARD OF ADJUSTMENT MEMBERS PRESENT: Mike Cypher, Doug Ode, Bonnie Duffy, Becky Randall, Paul Kostboth, and Jeff Barth.

STAFF PRESENT:

Scott Anderson, Kevin Hoekman, and David Heinold - County Planning

The meeting was chaired by Mike Cypher.

The meeting was called to order at 7:56 pm.

ZONING BOARD OF ADJUSTMENT

ITEM 1. Approval of Minutes – February 22, 2016

A motion was made by Commissioner Randall and seconded by Commissioner Duffy to **approve** the February 22, 2016 meeting minutes. The motion passed unanimously.

ITEM 2. VARIANCE #16-03 to reduce the minimum lot size from 1 acre to 0.46 acres on the property legally described as Lacey Tract 2 (Ex. Lots U2R & U3 & Ex. Knochenmus Addn.), SW1/4, Section 5-T101N-R48W.

Petitioner: Alliance Communications (Paul VanDeBerg)

Property Owner: Roger Knochenmus

Location: Approximately 2 miles west of Brandon

Staff Report: Scott Anderson

This would reduce the minimum lot size from 1 acre to 0.46 acres.

General Information:

Legal Description – portion of Lacey Tract 2 (Ex. Lots U2R & U3 & Ex. Knochenmus Addn.), SW1/4, Section 5-T101N-R48W

Present Zoning – A1 Agriculture

Existing Land Use – pasture

Parcel Size – approximately .46 acres

Staff Report: Scott Anderson

Staff Analysis:

The applicant is requesting approval to allow the creation of a lot that is less than one (1) acre in size. The proposed lot size measures 100 feet by 200 feet and would be approximately .62 acres in size. The applicant is planning on constructing a fiber termination building on the site. The applicant has prepared a narrative explaining the project and the need for a reduced lot size. The narrative has been included for your review.

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

Not all situations or events can be covered by a zoning ordinance and thus a mechanism is put into place in which the public can seek a variation to the regulations. In this situation, there is a compelling set of circumstances and conditions which are somewhat unique and support the granting of a variance. The proposed use does not require an acre to function. Furthermore, the applicant is attempting to limit the amount of land taken out of agricultural production.

The one (1) acre minimum lot size may reflect the state's minimum lot size for a well and septic system to be located on a residential lot. In this case, however, the lot being created will not be used for residential purposes. Furthermore, it will not be the site of any permanent work force requiring an office. Therefore, a smaller lot would benefit the applicant and surrounding land owners by reducing the footprint of the lot.

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.

Neighborhood utilities are allowed in the A-1 Agriculture District with a conditional use permit, for which the applicant has applied. The proposed use should not harm the property values in the

area.

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

Strict application would be a hardship on the property owner selling the land and would be unwarranted in the needs of the applicant. A smaller lot size is in the public's best interest.

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.

The proposed use is a public use and will be part of a communication network that will supply water for hundreds to thousands of people in the region. The overall need is evident. The use is typical of any community.

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.

There is a public need for this infrastructure. The request is a reasonable use of the property and allows for the best development of the site.

Recommendation: Staff recommends **approval** of Variance #16-03 to reduce the minimum lot size in the A-1 Agriculture District from one (1) acre to approximately .46 acre in size.

PUBLIC TESTIMONY

Scott Anderson, Planning Director, provided a brief overview and analysis of the staff report.

Paul Van De Berg, 113 N. Splitrock Blvd., representing Alliance Communications mentioned that the request for a variance is to serve the future growth of the Brandon community and reducing their cost while keeping the land functional to the current landowner. Andy also introduced himself as representative of Alliance Communications.

Commissioner Cypher asked if there is any noise or sound from the structure.

Andy indicated that there would be no need for a generator on the subject property. He proceeded to mention that there may be a plan to include some additional trees around the facility to soften the view.

Commissioner Barth asked about the building size and Mr. Van De Berg responded that the standard size is 12' x 16' placed on slab.

Commissioner Ode asked why the petitioner did not choose Maple St. as a potential location for the communications facility. Andy explained that there is a main feeder line that connects to a terminal box presently on the subject property.

Kevin Callies, 8101 E. Callies Pl., presented concern over access to the proposed communications facility due to the present use of the land for agriculture.

Mr. Van De Berg explained that the existing driveway off of Six Mile Rd. will be utilized and will be made stronger, wider, and better for both intended uses of the property.

Commissioner Barth asked if the cattle would wander around the site and Mr. Van De Berg indicated that they would propose a small fence around the building as well as a few trees.

DISCUSSION

There was no planning commission discussion.

ACTION

Commissioner Kostboth made a motion to **approve** Variance #16-03 and the motion was seconded by Commissioner Barth. The motion passed unanimously.

Variance #16-03 – Approved

ITEM 3. VARIANCE #16-04 to allow an accessory dwelling unit above detached garage on the property legally described as Tract 17, McCroskey Tracts, Section 10-T102N-R49W.

Petitioner: Pavel V. Shkinder

Property Owner: same

Location: 47560 Neener Cir.

Approximately 3 miles north of Sioux Falls

Staff Report: Kevin Hoekman

This would allow an accessory dwelling unit above detached garage.

General Information:

Legal Description – Tract 17, McCroskey Tracts, Section 10-T102N-R49W

Present Zoning – RR – Rural Residential

Existing Land Use – Vacant

Parcel Size – Approximately 0.84 acres

Staff Report: Kevin Hoekman

Staff Analysis:

The subject property is located one mile west of Renner in the McCroskey's Tracts Subdivision. Nearly all parcels in the subdivision have single family dwellings located on the property and many have detached garages. The parcels in the lot are slightly larger or slightly smaller than one acre in size. Records in the Planning Office indicate that the subdivision was platted in 1977.

The petitioner is requesting to building a single family dwelling and a detached garage with a single family living quarters built into part of the garage structure. This type of detached accessory building with a living quarters is commonly referred to as an accessory dwelling unit. The 1990 Revised Zoning Ordinance for Minnehaha County allows only one single family dwelling per lot. The request for an accessory dwelling would be a request for a second dwelling on the same property.

Staff met with the applicant before the application for a variance was received. Staff conveyed several options for the project. One option that would allow the land use would be to attach the garage and the extra living quarters to the primary dwelling to that there is two livable areas within one single family dwelling. Another option discussed is to have an accessory building with another type use within the building such as an office that would not have inhabitants in the building. Staff informed the petitioner that he may apply for a variance of the ordinance, but it would not likely be approved. A few days later, this variance application was received by Planning and Zoning.

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

This lot is not exceptional in the area. It is smaller than our one acre minimum requirement, but so are several other lots in this subdivision. The small size of the lot may lead to issues two single family dwellings on the lot because the parcel will require a septic system. The septic system will likely require a large area of the yard to adequately treat the wastewater. The

property does not have enough space for two separate on-site wastewater treatment systems.

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 granting of this variance request would allow a use that would not otherwise be allowed in any zoning district in the county including the rural residential zoning designation of this parcel.

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

This property is undeveloped. The property owner has the ability to develop a single family dwelling in the same manner as other rural residential zoned property.

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.

This request is directly against the Zoning Ordinance that allows one single family dwelling per lot in the Rural Residential zoning district. Many accessory structures exist in the area around the location for this request, but no accessory dwelling units are located in the neighborhood.

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.

This property can currently allow one single family dwelling. One single family dwelling on a lot is the primary use of rural residential zoned parcels. The use as a single family dwelling construction is reasonable for the zoning district.

Recommendation:

Staff recommends **denial** of Variance #16-04 to allow a second dwelling in the rural residential zoning district.

PUBLIC TESTIMONY

Kevin Hoekman, Planner I, presented a brief overview and analysis of the staff report.

Commissioner Barth asked what the septic requirements would be for this site and Mr. Hoekman replied that the minimum lot size is 1 acre as well as not allowing 2 septic systems on the one lot.

Pavel Shkinder, 4109 N. Pennsylvania Ave., explained the situation for his request to build a three-car garage with an apartment in the attic to live there for a few years then move into the new house. Mr. Shkinder mentioned that they would like to use the apartment above the detached garage as living space for grandparents and guests, but only for family members. He proceeded to mention that it would be possible to attach to the house, but they want to have proper enclosure for guests.

Earl Erpelding, 47574 Neener Cir., identified himself as a long-time resident and presented concern over relaxing the requirements for development of single family dwellings in the area. Mr. Erpelding proceeded to mention that he doesn't believe that the detached garage should be

allowed to be constructed prior to completion of the single family dwelling.

Barney Cain, 47572 Neener Cir., indicated that he was also within the 500-foot buffer area and concurs with Mr. Erpelding that the single family dwelling should precede construction of the detached garage.

John Hoek, 47582 Theresa Cir., reiterated the concern that the single family dwelling should precede the detached garage. Mr. Hoek also presented concern over adequate dispersal from the septic system and that the petitioner should put more bedrooms onto the existing dwelling not above a detached garage.

Mary Haagenson, 47586 Theresa Cir., concurs with the comments of neighbors and that this is a single family housing development. She proceeded to mention that the petitioner should add onto the existing house for additional space.

Mr. Shkinder explained that he spoke with the septic installer and seven bedrooms is the maximum number for the ground to be able saturate. He also mentioned that the detached garage with living quarters allows him the best use of land.

Commissioner Cypher closed the floor to further public testimony.

DISCUSSION

Commissioner Barth concurred with the planning staff recommendation. Commissioner Cypher explained that the development only allows one single family unit per lot. Commissioner Barth indicated that the petitioner may explore other options for their idea.

Commissioner Kostboth noted that the applicant should work staff on options for the site and neighborhood. Commissioner Randall mentioned that this is a good vision, but there are other options available to the petitioner. Commissioner Cypher explained that this would be an illegal eligibility.

ACTION

Commissioner Barth made a motion to **deny** Variance #16-04 and the motion was seconded by Commissioner Ode. The motion passed unanimously.

Variance #16-04 – Denied

Adjourn

A motion was made to **adjourn** by Commissioner Ode and seconded by Commissioner Kostboth. The motion passed unanimously. The meeting was adjourned at 8:30 pm.