



**SIOUX FALLS AND MINNEHAHA COUNTY
BOARD OF ADJUSTMENT
MEETING MINUTES**

February 25, 2019

**MINUTES OF THE JOINT MEETING
MINNEHAHA COUNTY & SIOUX FALLS BOARD OF ADJUSTMENTS
February 25, 2019**

A joint meeting of the County and City Planning Commissions was held on February 25, 2019 at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

COUNTY PLANNING COMMISSION MEMBERS PRESENT: Bonnie Duffy, Becky Randall, Adam Mohrhauser, Ryan VanDerVliet, Doug Ode, Mike Ralston, and Jeff Barth.

CITY PLANNING COMMISSION MEMBERS PRESENT: Larry Luetke, Kati Johnson, Sean Ervin, John Paulson, and Nicholas Sershen.

STAFF PRESENT:

Scott Anderson, Kevin Hoekman, and David Heinold - County Planning
Donna Kelly – Office of the State’s Attorney
Jason Bieber – City Planning

The County Planning Commission Chair Bonnie Duffy presided over the meeting. The City Planning Commission was chaired by Larry Luetke. Planning Commission Chair Bonnie Duffy called the joint City of Sioux Falls and Minnehaha County Board of Adjustments meeting to order at 7:13 p.m.

PUBLIC COMMENT.

Chair Commissioner Duffy opened the floor for public comment and nobody moved to speak.

Consent Agenda

Chair Commissioner Duffy read each item on the consent agenda and nobody from the Commission, staff, or the public desired to comment about any item.

A motion was made for the County by Commissioner Mohrhauser and seconded by Commissioner Ralston to **approve** the consent agenda consisting of Items 1 and 2. The motion passed unanimously. The same motion was made for the City by Commissioner Ervin and seconded by Commissioner Sershen to **approve** the consent agenda consisting of Items 1 and 2. The motion passed unanimously.

ITEM 1. Approval of Minutes – July 23, 2018

As part of the consent agenda, a motion was made for the County by Commissioner Mohrhauser and seconded by Commissioner Ralston to **approve** the meeting minutes for July 23, 2019. The motion passed unanimously. The same motion was made for the City by Commissioner Ervin and seconded by Commissioner Sershen to **approve** the meeting minutes for July 23, 2019. The motion passed unanimously.



**SIoux FALLS AND MINNEHAHA COUNTY
BOARD OF ADJUSTMENT
MEETING MINUTES**

February 25, 2019

ITEM 2. VARIANCE #19-03 to reduce the minimum lot size from 1 acre to 0.36 acres and reduce the minimum rear setback from 30 feet to 15 feet on the property legally described as Tracts 1 and 2, MCWC Addition, SE1/4 SE1/4, Section 18-T102N-R48W.

Petitioner: Scott J. Buss, Executive Director (MCWC)

Property Owner: same

Location: 47898 259th St. - Located approximately 2 miles northeast of Sioux Falls

Staff Report: Scott Anderson

General Information:

Legal Description – portion of Tract 1, Hansen Addition, Section 18, T102N, R48W.

Present Zoning – agriculture

Existing Land Use – vacant

Parcel Size – .066 acres

Staff Report: Scott Anderson

Staff Analysis: The applicant is requesting a variance to reduce the minimum lot size to approximately 0.36 acres and reduce the rear yard setback to 15 feet. The applicant is acquiring some additional land in order to enlarge an existing lot and construct a booster station. The applicant has indicated that the booster station is needed to fully utilize the connection to the Lewis & Clark Regional Water system. The applicant has submitted a narrative, which is included for the Planning Commission's review. Also included in this variance request is a reduced rear yard setback from 30 feet to 15 feet for the future booster station.

On February 5, 2019, staff conducted a site inspection. The site is located at the intersection of 259th Street and 479th Avenue. There is an existing water distribution facility on Tract 1 of MCWC Addition. The area consists primarily of agricultural land in crop production. There is a residential home located to the north of the subject property.

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 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.

Private infrastructure facilities are allowed in the A-1 Agriculture District. 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 the community water system's infrastructure. The existing tank facility is currently on the subject property. The proposed additional land is needed to allow for a small booster station to be constructed. The booster station will allow for a tie into the Lewis and Clark water system. The infrastructure is needed for the betterment of the 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 use. The request is a reasonable use of the property and allows for the best development of the site.

Recommendation: Staff recommends **approval** of Variance #19-03 to reduce the minimum lot size in the A-1 Agriculture District from one (1) acre to approximately .36 acre in size and to reduce the rear yard setback from 30 feet to 15 feet.

Action:

As part of the consent agenda, a motion was made for the County by Commissioner Mohrhauser and seconded by Commissioner Ralston to **approve** Variance #19-03. The motion passed unanimously. The same motion was made for the City by Commissioner Ervin and seconded by Commissioner Sershen to **approve** Variance #19-03. The motion passed unanimously.

Variance #19-03 - Approved



**SIoux FALLS AND MINNEHAHA COUNTY
BOARD OF ADJUSTMENT
MEETING MINUTES**

February 25, 2019

Regular Agenda

ITEM 3. VARIANCE #19-02 to reduce the front yard setback from 30 feet to 15 feet on the property legally described as DeGraaff Tracts 3 and 4, SE1/4 SE1/4, Section 19-T102N-R49W.

Petitioner: Brian Stevens

Property Owner: same

Location: Intersection of N. Purple Martin Ave. & W. Flicker Dr.

Located Approximately 1 mile north of Sioux Falls

Staff Report: Kevin Hoekman

General Information:

Legal Description – DeGraaff Tracts 3 and 4, SE1/4 SE1/4, Section 19-T102N-R49W

Present Zoning – RR-Rural Residential

Existing Land Use – Vacant

Parcel Size – 2.11 acres

Staff Report: Kevin Hoekman

Staff Analysis:

The petitioner is requesting a variance from the front yard setback requirement on the subject property. The request is to allow the construction of a single family dwelling with an attached garage. The petitioner has submitted a detailed narrative regarding the reasons the setback reduction should be considered. The requested variance would reduce the front yard setback to 15 feet for one single family dwelling to be located on the combined two residential lots. County Planning Staff has worked with staff from the City of Sioux Falls to determine that the comparable Rural Detached Dwelling Form for the City Zoning Code requires a 30 feet front yard setback.

The petitioner narrative explains several reasons to justify the request including the primary reason of the steep slope on the parcel. Planning staff visited the site and found that much of the area north of W. Flicker Drive (mostly on Tract 3 of the combined parcel) is steeply sloped away from the road, but portions of the west side of the property (mostly on Tract 4 of the combined parcel) does have flatter land.

The proposed request to reduce the front yard setback is a unique situation. The two subject tracts were recently combined together with the intent to build one single family dwelling where two single family dwellings would otherwise be permitted. Tract 3 by itself would cause some difficulty for development because of the steep slope. The petitioner has proposed a sort of compromise where the single family dwelling is planned to straddle the line between Tracts 3 and 4. The orientation of the dwelling runs parallel to the contours of the hill which is likely arranged for best conditions for a walk out basement. Having the dwelling straddle the two lots would also limit future development of the property to one single family dwelling until a sanitary



**SIOUX FALLS AND MINNEHAHA COUNTY
BOARD OF ADJUSTMENT
MEETING MINUTES**

February 25, 2019

sewer system is available through annexation or other means (a residential lot requires a minimum of 1 acre lot size requirement). The situation of one single family dwelling is placed on both tracts may avoid a similar setback reduction request in the future if one dwelling was planned for Tract 3 alone. The Board of Adjustment should be aware that a single family dwelling can likely be placed to meet the setbacks on the west portion of the property where the land is not as steep. If a walkout basement is desired, the petitioner could work with the builder to shift the dwelling location northwest to maintain the elevation of where the house is proposed and meet the required setbacks.

The Zoning Board of Adjustment shall not vary the regulations unless it shall make findings based upon the evidence presented to it in each specific case that all of the following conditions are present. In addition to the staff comments below, the petitioner submitted narrative included statements which address the required conditions of the County Zoning Ordinance which is similar to the Joint Zoning Ordinance.

(a) The particular physical surroundings, shape or topographical conditions of the specific property involved would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.

The property is steeply sloped north of W. Flicker Drive. The property owner has written that the lot is too steep to build a dwelling if a variance is not granted. Staff has observed that the east part of the property (Tract 3 of the combined parcel) is steep, and it may create some hardship to construct a dwelling on the property without a reduction of the front yard setback. There may, however be buildable space on the west side of the parcel (Tract 4) where the slope of the land is more gradual. The petitioner stated in a phone conversation that the dwelling was already shifted further west than intended because of the steep terrain. The petitioner may experience the hardships of longer driveway and increased cost of foundation walls as stated in the submitted narrative if a variance is not given.

(b) The conditions upon which the application for a variance is based would not be applicable generally to other property within the same zoning classification or other property substantially similar in use.

The reduced front yard setback will not permit a use not normally allowed within this zoning district. Staff calculated through GIS that the slope of the east portion of the property is approximately 17% over the length of the subject property. The adjacent property to the east is undeveloped and has a similar slope. Granting this property a variance may lead to a similar request for the future construction of a dwelling on the neighboring property. Staff also used GIS to find that several properties in the development along Western Avenue which have steep slopes. These properties already have single family dwellings constructed on them. The existing dwellings in the development show how a similar slope can be developed while maintaining required setbacks. Staff has included a GIS created map which shows the contours of the subject property and the similar neighborhood properties.



**SIOUX FALLS AND MINNEHAHA COUNTY
BOARD OF ADJUSTMENT
MEETING MINUTES**

February 25, 2019

(c) The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the area in which the property is located.

The proposed setback would not be detrimental to the public welfare. The property is located at the end of a large residential development with limited traffic and limited ability to expand due to lack of road access. Allowing the placement of one single family dwelling in the centralized part of the parcel could allow for better planning and positioning of the onsite wastewater septic system which will be required for the use.

(d) The proposed variance will not unreasonably impair: an adequate supply of light and air to adjacent property; increase the congestion in the public streets; increase the danger of fire; endanger the public safety; or diminish or impair property values within the area.

The proposed variance will not affect the light or air of adjacent properties. A single family dwelling will increase traffic on the residential streets, but the impact will be minimal and permissive even if the variance is not approved. The reduction of setback will not increase the danger of fire or the public safety of the neighborhood. The reduction in setback will also not likely diminish property values of neighbors in the area because it is located towards a far end of a residential subdivision.

(e) 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 submitted narrative states that the house cannot be built with the current site conditions. It is likely that construction on the slope will increase costs of construction and development of the lot as also noted in the narrative; however staff finds that there may be alternative locations to place the dwelling on the flatter portion of the lot. Placing the dwelling further west on the flatter portion of the parcel will likely increase cost of driveway construction due to the length of the driveway. The property may be developable without a variance with increased cost of development over typical parcels as explained in the narrative. It is the Board of Adjustment's responsibility to determine if the hardship of increased cost is enough to allow the reduction in front yard setback.

(f) That the variance, if authorized, will represent the minimum variance that will afford reasonable relief and will represent the least modification desirable of the zoning regulations.

The petitioner describes in the narrative that there already has been changes in the plans for the home location to better accommodate the petitioner's desire to build on the site and to consider the county setback. The petitioner has shown the desire to build one single family dwelling on a property that could handle two. A description in the narrative includes statements that adjustments to the dwelling location have already been made to best meet the minimum variance necessary to accomplish his goals. It may be that allowing one dwelling on the property with a reduction in setback may be a smaller reduction than having a dwelling on tract three by itself. The Board of adjustment will have to determine if the compromise of one building on the



**SIOUX FALLS AND MINNEHAHA COUNTY
BOARD OF ADJUSTMENT
MEETING MINUTES**

February 25, 2019

property with a potentially smaller setback reduction is adequate to allow the variance.

Staff finds that the property can still be developed with a single family dwelling by other means such as added dirt work or changing desirable site location. Therefore, the variance does not meet the provisions in Article 21.00 of the Revised Joint Zoning Ordinance for Minnehaha County and the City of Sioux Falls. The City of Sioux Falls Planning Department has submitted comments for review.

Recommendation:

Staff recommends **Denial** of Variance #19-02.

Public Testimony

Kevin Hoekman, County Planning Department, presented a brief overview of the staff report and recommendation for Variance #19-02.

Jerry Myott, 3305 Old Yankton Road, was present to represent the property owner and petitioner. Mr. Myott explained that there is about 14' of drop for the dwelling and that the dwelling will be farther from the physical road than other neighborhood houses. The further the house is moved west creates more expense because of long driveway. In addition the further west the dwelling is located brings the dwelling into view of the interstate. He finished that even a 20 feet setback would help with relief from the slope.

Don Neuhalfen, 6209 N. Purple Martin Avenue, is the neighboring property owner to the south of the proposed dwelling. He noted that the tract is steep, but the further west on the tract the flatter the ground. He finished that he is not for a 15 foot setback.

Will Rishling, Neighbor in the area and township board supervisor, noted that the township put up new signage along the streets which cannot be moved. He asked where the driveway would be placed.

Craig Winnia, a contractor for the home, stated that the driveway will come off W. Flicker Drive and turn directly into the garage. He continued that the flatter ground does not work with the planned house design. Mr. Winnia explained that the property line is further away from the physical road on W. Flicker Drive than it is on Purple Marton Avenue.

Kevin Hoekman of county staff was called back to clarify the situation of the road setback. He explained that W. Flicker Drive is not centered in the road, and that the road may be moved back to the center when the City of Sioux Falls annexes the site and rebuilds the roads.

Nobody else approached the podium to speak and the floor was closed for discussion.

Discussion



**SIOUX FALLS AND MINNEHAHA COUNTY
BOARD OF ADJUSTMENT
MEETING MINUTES**

February 25, 2019

Commissioner Barth commented that it is likely that the quality of the building site was taken into account when the property was sold.

Commissioner Ervin stated that the site looks to be a challenge to build but the variance appears to be a problem with design and not the site induced issue.

Commissioner Ralston agreed that the building may be redesigned to relocated on the site to accommodate the setback.

Action

A motion was made to deny Variance #19-02 for the County by Commissioner Ralston and seconded by Commissioner Randall. The motion passed unanimously. A motion was made to deny Variance #19-02 for the City by Commissioner Ervin and seconded by Commissioner Paulson. The motion passed unanimously.

Variance #19-02 – Denied

Old Business

None.

New Business

None.

Adjourn

A motion was made for the County by Commissioner Barth and seconded by Commissioner Randall to adjourn. The motion passed unanimously. A motion was made for the City by Commissioner Ervin and seconded by Commissioner Sershen to adjourn. The motion passed unanimously. The meeting was adjourned at 7:36 pm.