

**MINUTES OF THE
MINNEHAHA COUNTY ZONING BOARD OF ADJUSTMENT
May 23, 2005**

A meeting of the Zoning Board of Adjustment was held on May 23, 2005 at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

BOARD MEMBERS PRESENT: Deb Bunde, Mike Cypher, Anne Hajek, Susie O'Hara, Mark Rogen, Don South, and Wayne Steinhauer.

STAFF PRESENT: Scott Anderson, Phil Kappen and Pat Herman.

The meeting was chaired by Don South.

Item 16 was deferred from the April 25, 2005 meeting.

ITEM 16. APPEAL OF ADMINISTRATIVE DECISION to allow a garage as the primary use of the property.

Legal Description- Tract 4 Runack Addition in NE1/4 of Section 23-T102N-R51W
Location - ½ mile east of Hartford
Petitioner / Owner- Leonard & Gloria Maxwell
Present zoning - A-1 Agricultural
Existing Land Use - Agriculture
Parcel Size – 6.91 acres

Report by: Phil Kappen

Staff Analysis

The subject property is located ½ mile east of Hartford. It is part of a small subdivision approved via the transfer of some eligibilities in 2003. One lot in the subdivision has already had a home constructed on it.

The appellant contacted the planning office to obtain a building permit to erect an accessory structure. They wish to build the accessory structure at this time and construct a house later (possibly in a couple of years). Staff informed the appellant that the zoning ordinance prohibits the construction of an accessory building prior to commencing construction on the principle structure. The appellant took exception to that answer and applied to appeal an administrative decision.

Section 12.07, Subsection B of the 1990 Revised Zoning Ordinance for Minnehaha County reads as follows:

“12.07 ACCESSORY BUILDING AND USES. The regulations regarding accessory buildings and uses shall be as follows:

(B). Time of Construction. No accessory buildings shall be constructed upon a lot until the construction of a main building has been actually commenced, and no accessory buildings shall be used unless the main building on the lot is also being used. Accessory buildings may not be used for dwelling purposes.”

The reasoning behind this section was that it is difficult to consider a structure as an accessory use to another use when the primary use has not yet commenced. There have been a number of incidents in the past where an existing detached accessory building setting alone on a parcel of land was sold to a person who took advantage of the existing building to start a business. It is reasonable to require that the primary structure be constructed prior to the construction of an accessory building.

Staff found that the meaning of the zoning ordinance in this instance is quite plain and that there is no justification for the requested overturning of the administrative decision.

Public Testimony

The petitioners, Leonard and Gloria Maxwell, stated that they have one residential building eligibility on this lot. They have removed ¼ of damaged trees on the site, planted 558 trees and shrubs, constructed a driveway, and put in rural water. All of this was done at considerable cost. They would like to build a garage to store their truck, wood chipper, tractor and other materials. They plan to build a house in the northwest part of the property next year. The Maxwell's stressed that they have every intention of

constructing the house and would not let the accessory building be used for other purposes.

No one else wished to speak to the item and the floor was closed to public testimony.

Commissioner South stated that he understood why the Maxwells wished to build the garage at this point, but asked them to understand the concerns of the Commission in granting such a request. Commissioner Cypher stated that the staff had correctly interpreted the zoning ordinance and that the reasoning behind the law was sound.

A motion was made by Cypher and seconded by Bunde to uphold the staff's interpretation and **deny** the request to overturn the administrative decision.

ITEM 17. VARIANCE #05-02 to allow a front yard set back of 36' for an accessory building.

Legal Description – Vacated ROW lying adjacent and Tract 1 Michael's Addition SE1/4 in
Section 28-T101N-R48W
Location - 3 miles east of Sioux Falls
Petitioner / Owner- Clark Meyer
Present zoning - A-1 Agricultural
Existing Land Use - Residential
Parcel Size - 7.89 Acres

Report by: Phil Kappen

Staff Analysis

The subject property is located to the west of 481st Avenue (Co. Hwy 115) and north of 267th Street. Earlier in 2005 the petitioner began construction of a detached accessory building without first obtaining the required building permit. He had completed the foundation of the building before the planning office became aware of the building permit violation on February 23, 2005. The foundation was placed only 36 feet from the county highway right-of-way rather than the required 50 feet.

After we contacted the petitioner, he came in and obtained the required building permit (permit 05-037 issued 3/4/2005). The site plan attached to the building permit shows that he will meet the required 50-foot set-back from the right-of-way. The petitioner now wishes to obtain a variance to the setback requirements to allow him to keep the building at the location that he has already constructed the foundation.

State law allows for variances and the Minnehaha County Zoning ordinance makes provisions for variances to zoning ordinances when all of the following conditions are present:

- (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.
- (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.
- (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.
- (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.
- (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.
- (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.

In addition, the ordinance provides that the Board can hear and make determinations on variance to exceed the height limits as established by these regulations and that the Board of Adjustment, under its authority to grant variances may impose reasonable conditions on the grant, and one accepting those conditions is bound by them.

The petitioner claims that the situation merits a variance due to the hardship imposed by the cost to move the building foundation. It is a standard of planning law that the literal enforcement of the ordinance result in an unnecessary hardship in order for a variance to be approved. It is also, however, a standard of planning law that a hardship not be self-imposed. In this instance the hardship results from the fact that the petitioner did not obtain the required building permit and commenced construction of the accessory building. Had he applied for the required permit, staff would have checked the setback from property lines on the proposed site plan. If the plan had showed that the setback requirement would not be met, staff would have required that a revised site plan be prepared that showed the proper setback. There is a bold print notation on all building permits that states "NOTE: Measurements are shown from road rights-of-way." This notation was present when the petitioner obtained a building permit to construct his home on June 12, 2000. The site plan he submitted as a part of that permit also shows the setback from the county highway right-of-way rather than from the highway. It would seem from this that he was aware that any front-yard setback must be measured from the right-of-way.

Staff finds that any hardship cited as a reason for the requested variance is self-imposed due to the failure of the petitioner to obtain the required building permits in a timely manner. Staff recommended denial of the variance request.

Public Testimony

The petitioner, Clark Meyer stated that he had phoned the Planning Department last fall and was told he did not need a permit until the poles were in the ground. He decided to go with footings on his building. Once he was informed he had started too soon he came in and got the building permit and paid the double fee. He would now like to increase the size of the building to 48 x 80, but he has not started working on the larger size building.

His land slopes to the river and he feels where he poured the footings is the only spot on his land which is level enough to place the building. If he has to move back the building an electrical box will be left out in the open. Mr. Meyer stated that he had the signatures of 15 of his neighbors in support of his request; however he never presented those signatures to the Commission. He pointed out that there is an existing building a ¼ mile south of him which is on 30' from the right-of-way. He is asking for a 36' set back.

Mr. Kappen stated he was not familiar with the building Mr. Meyer mentioned. He explained that there is provision in the zoning ordinance that allows a new building to be built as close to the right-of way as any adjacent buildings. In this case there is not anything adjacent to this site that is not in compliance with the set back requirements. Mr. Kappen also stressed that Mr. Meyer knew building permits were required as he had previously obtained one for his house.

Gordy Swanson, Office of the State's Attorney, stated that zoning ordinance stipulates that all of the conditions listed under variances must be present in order for a variance to be granted by the Zoning Board of Adjustment. (Those conditions are listed in the staff report as A-F). The Board can not approve a variance if these conditions are not met. Mr. Swanson felt that the planning staff could be asked to document which of these conditions were not met. He stressed to the Board that even if only one or two of the conditions were not met, they still must deny the variance.

Mr. Kappen addressed each of the conditions as listed in the 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.

There are no conditions with the property which would prevent Mr. Meyer from meeting the set back. This hardship is self imposed by Mr. Meyer not inquiring what set backs are required. Had he applied for a building permit before stating construction, as required by the zoning ordinance, he would have been

told by the staff that a 50' set back was required. It has been established in planning law that a self-imposed hardship does not warrant the granting of a variance.

- (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 50' set back is not specific to this property. All properties fronting this highway are required to meet the same set back.

- (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.

Set backs are established for public safety reasons. They allow a clear view for persons pulling onto the highway, allow room for vehicles to pull out of the way of traffic, for construction crews to have a safety buffer, and preserve right-of-way for future expansion of the road way.

- (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 request for the variance meets this condition.

- (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 property has been developed by the petitioner. He constructed a house, meeting the required set backs. He has stated at this meeting that he wishes to increase the size of the accessory structure.

- (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.

This asks for a minimum which would work. This request is not for a minimum set back, it is a request to correct a mistake the petitioner made, and to avoid the cost of correcting that mistake.

No one else wished to address this item the floor was closed to public testimony.

Commissioner Bunde stated that the petitioner did not satisfy the conditions as required by the ordinance.

Commission Steinbauer stated that he was in support of the Planning Department's recommendation of denial.

A motion was made by Bunde and seconded by Steinbauer to **deny** the variance request. The motion passed (Hajek nay).

ITEM 18. VARIANCE #05-04 to allow the temporary placement of a 4'x 8'sign.

Legal Description – Tract 1A Vandersnick's Addition NE1/4in Section 29-T103N-R47W

General Information

Location -	south edge of Garretson
Petitioner / Owner-	River Ridge Golf Course / Joe Vandersnick
Present zoning -	A-1 Agricultural
Existing Land Use -	Agricultural
Parcel Size -	20.76 Acres

Report by: Scott Anderson

Staff Analysis

The applicant is requesting to place a 32 square foot directional sign instead of the permitted 9 square foot sign allowed by Article 17.02(A) 1 of the Zoning Ordinance. The applicant has indicated that this sign will be a temporary sign to provide direction to the River Ridge Golf Course from County Highway 105 instead of S.D. Highway 11, which is being reconstructed during 2005.

Staff conducted a site inspection on May 6, 2005, of the subject property. Staff observed a sign already advertising the golf course, which meets the current size requirements. The sign was located at the intersection of County Highway 105 (486th Avenue) and 254th Street. The nearest residence was located about 400 feet to the west and east. Both the existing sign and proposed sign will be non-illuminated. Should this Variance be approved, the 32 square foot sign would replace the smaller sign currently advertising the location of the golf course.

The Zoning Ordinance requires the Zoning Board of Adjustment to determine that four (4) specific criteria are met.

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

South Dakota Highway 11 is being reconstructed for the balance of 2005. The primary entrance to the golf course is located off of S.D. Highway 11 via 485th Avenue. This entrance is temporary closed due to road construction. The road construction constitutes a hardship. Once the road construction is complete, the hardship will disappear.

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 requested Variance would not allow a use otherwise excluded from the district.

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

The Zoning Ordinance currently allows for a nine (9) square foot sign. Strict application of the Zoning Ordinance would not create a hardship for the applicant. They simply desire greater visibility for their business.

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 of the proposed Variance does not harm the public. Staff can support the request with a condition that the larger sign be removed once the reconstruction of S.D. Highway 11 is complete. The applicant has demonstrated a specific circumstance which does constitute a limited degree of hardship. The sunset clause attached with the approval of this Variance will mitigate any long term impact on the public.

Recommendation

Staff recommended approval of Variance #05-04 to allow a 32 square foot off-premise directional sign with the following conditions:

- 1) That the 32 square foot sign be moved once the reconstruction of S.D. Highway 11 is completed.
- 2) That the applicant removes the smaller sign and obtains a building permit for the 32 square foot sign prior to installation.

Public Testimony

The petitioner, Bobbi Jo Sakry, stated that the construction on Highway 11 has caused a hardship as people have to take a detour to get to the golf course. She would like a larger sign just for the duration of the construction. Once Highway 11 is completed the sign would be removed.

No one else wished to address the item and the floor was closed to public testimony.

A motion was made by Rogen and seconded by Cypher to **approve** the variance with the conditions as

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stated. The motion passed unanimously.