

**MINUTES OF THE
MINNEHAHA COUNTY PLANNING COMMISSION
October 22, 2007**

A meeting of the Planning Commission was held on September 27, 2007 at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

COUNTY PLANNING COMMISSION MEMBERS PRESENT: Deb Bunde, Susie O'Hara, Mark Rogen Don South, Wayne Steinhauer and Carol Twedt.

STAFF PRESENT: Scott Anderson, Phil Kappen, and Pat Herman - County Planning

The meeting was chaired by Don South.

ZONING BOARD OF ADJUSTMENT

The Planning Commission was convened as the Zoning board of Adjustment to consider Item 1. Item 1 was deferred from the September 24th meeting.

ITEM 1. VARIANCE # 07-4 to allow a front yard setback of 16 feet.

Legal Description – Lot 17A Country Gable Est. 2 in Section 5-T101N-R48W

Location - 8409 E. Sunset Circle 1 mile west of Brandon

Petitioner / Owner- Merle Ankrum

General Information

Present zoning - A-1 Agricultural

Existing Land Use - Residential

Parcel Size - 1.4 Acres

Report by: Scott Anderson

Staff Analysis

The applicant is requesting a variance to reduce the minimum front setback from 30 feet to 16 feet for the purpose of adding a third attached garage stall to the existing residence. The applicant has indicated that the topography precludes building the garage on the west or south sides of the house.

On September 10, 2007 staff conducted a site visit. The property does slope rather steeply to the south and leads into wooded ravines eventually leading to the Big Sioux River. In addition, staff noted that the septic tank and drainfield appear to be located on the south side of the house.

Minnehaha County Zoning Ordinance clearly states that the Board of Adjustment may not vary the setback regulations unless it makes findings based upon evidence that **all** of the following conditions are present. Staff has visited the site and prepared its observations in regard to the following.

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

There are topographical features associated with this lot. It does slope to the south. The Zoning Ordinance states that the topography of the lot has to be so extreme that it would result in a hardship to the owner and not merely an inconvenience. The owner has failed to demonstrate this. There are areas on the lot where a single stall garage could be constructed. In fact, it appears that there is room to the east side of the existing garage area which could be utilized.

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.

No hardship exists. The applicant has full use of the property with a single family residence with an attached double stall garage. An alternate location could be found on the large one-acre lot which would meet all of the minimum required setbacks.

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 variance is not in the public's interest. The proposal would allow a reduction in a setback when a suitable alternative exists. The applicant could construct the additional single stall garage addition on the east side of the existing single family residence.

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.

In reviewing this aspect of the criteria set forth in the Zoning Ordinance, the applicant can not make a case. The property owner has full reasonable use of the property. The fact that the house was constructed with only a double stall garage instead of a triple stall garage does not eliminate reasonable use of this property. Had the original owners of the residence more properly planned ahead, construction techniques could have been utilized which would have initially allowed for the 3 stall or allowed for it to be added at a later date. The applicant has full use of the property at this point.

While staff can understand the applicant's desire to have an additional garage, the applicant has failed to provide any proof of the lack of use of the site. The Board of Adjustment must follow guidelines set forth in Article 21.04 of the Zoning Ordinance which indicate that without a variance no reasonable use of the property exists. Staff can not support the variance request.

Recommendation

Staff recommended denial of Variance #07-04 to reduce the front yard setback from 30 feet to 16 feet.

Public Testimony

The petitioner, Merle Ankrum, displayed photos of the property. He explained that he had not been on the property when Mr. Anderson had made his site visit. Mr. Ankrum had marked the property line on the east, which is much closer than Mr. Anderson had assumed. Mr. Ankrum explained that he is limited as to where he can build a 3rd garage stall on this site due to the topography – ravines and steep slope. He could place a building on the southern portion of the land, but there is no way to access that part of the lot. His current garage is 24 feet wide and he would be willing to reduce the width of his 3rd stall to 12 feet.

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

In response to Commissioner Rogen, Mr. Anderson explained that Sunset Circle is platted as a 66 foot right-of-way. It is possible that it might be paved someday if, for example, the neighborhood were to be annexed into the City of Brandon.

Commissioner Steinhauer noted that it is always a struggle with these requests. There is unusual terrain on this lot, the road curves here, and the houses on this street are not aligned or set back from the roadway in a consistent manner. The alternative is to have things stored outside. Commissioner Bunde mentioned that much of the lot is not accessible due to the ravine.

A motion was made by Commissioner Steinhauer to allow a front yard setback of 18 feet due to the topography, curvature of the road and staggered housing pattern. Seconded by Rogen. Bunde, O'Hara, Rogen, and Steinhauer aye, South nay, Twedt absent. The motion failed. [A 2/3rds majority vote is required to approve a variance, five affirmative votes.]

PLANNING COMMISSION

A motion was made by Steinhauer and seconded by Rogen to adjourn as the Board of Adjustment and reconvene as the Planning Commission. The motion passed unanimously, Twedt absent.

CONSENT AGENDA

A motion was made by O'Hara and seconded by Rogen to approve the consent agenda with Items 3 & 6 removed. The motion passed unanimously, Twedt absent.

ITEM 2. MINUTES – September 24, 2007

A motion was made by O'Hara and seconded by Rogen to approve the minutes. The motion passed

unanimously, Twedt absent.

Deferred from the August 27, 2007 meeting.

ITEM 3. CONDITIONAL USE PERMIT # 07-74 to allow a 300 animal unit concentrated animal feeding operation.

Legal Description – Tract 1 & 2 Nelson's Addition NW1/4 of Section 28-T102N-R47W
Location - 26012 486th Ave. 2 miles north of Valley Springs
Petitioner / Owner- Ronald Kuipers

Item 3 was placed on the regular agenda.

ITEM 4. CONDITIONAL USE PERMIT # 07-82 to transfer one residential building eligibility.

From – NE1/4 SE1/4 in Section 11-T102N-R49W
To – SE1/4 SE1/4 in Section 11-T102N-R49W
Location – 1 ¾ miles east of the Renner corner
Petitioner / Owner- Edwin Powers

General Information

Present Zoning - A-1 Agricultural
Existing Land Use - Agriculture
Parcel Size - 40 Acres

Report by: Phil Kappen

Staff Analysis

The subject property is located on the north side of 258th Street 1¾ miles east of the Renner corner. The surrounding properties are agricultural with a number of scattered acreages. The petitioner wishes to transfer the building eligibility from a land-locked quarter-quarter to one near County Highway 130.

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 placement of a house in the proposed location would have the greatest potential for impact on the petitioner who wishes to place the house adjacent to his farmstead. The petitioner has already transferred an eligibility along a portion of the highway to the east of this site and the transfer of the eligibility would be in character with the previous actions along this stretch of highway.

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

The planned use for the majority of the land in this area is agricultural. A right-to-farm notice covenant is required on the property to inform potential home buyers of the realities of living in a viable agricultural area.

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

The proposed site for the residence could easily be accessed via the petitioner's existing driveway off of County Highway 130. The petitioner has indicated that he has verbal approval from the County Highway Department for a new driveway separate from the existing driveway into his farmstead. Staff has checked with the Project Engineer for the County Highway Department. This is the person who approves driveway access permits. The engineer has informed us that they do not give verbal approval. The person wishing access must fill out the proper permits at the County Highway Department and the project engineer checks the site and approves or disapproves the permit.

Staff has concerns about the placement of additional driveways accessing Highway 130. The greater the number of driveways that access a highway, the greater the potential for traffic accidents and the county has had a policy of discouraging the creation of additional driveways when an existing driveway can be utilized. There are already numerous driveways that access the highway and staff questions the wisdom of allowing additional driveways. If the County Highway Department, however, were to officially approve a driveway, since they have the ultimate authority to approve such access, staff may be able to acquiesce. Use of the existing driveway should be required unless the petitioner provides the official approval for an additional driveway.

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

There is adequate space on the property for any approved residential uses.

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.

There should be little odor, dust or noise impacts from the typical single-family residential use which would be authorized by the approval of this permit. Outside lighting should be of a shoebox style to prevent light spillage onto neighboring properties.

Recommendation

Staff found that the transfer of the building eligibility conforms with the density zoning standards set forth in the zoning ordinance and recommended approval of Conditional Use Permit # 07-82 with the following conditions:

- 1) The eligibility shall be transferred from the NE1/4 SE1/4 to the SEW1/4 SE1/4 of Section 11-T102N-R49W.
- 2) The property shall be platted and a right to farm notice covenant filed on the deed of the lot prior to the issuance of a building permit.
- 3) The proposed residence and any additional parcels created through the implementation of this permit shall be accessed via the existing driveway for 47690 258th Street unless the petitioner obtains official written approval from the Minnehaha County Highway Department. If there is to be a separate driveway, the written approval must be obtained prior to the issuance of any building permit.
- 4) All outside lighting shall be of a shoebox style that directs light downward and prevents spillage of light beyond the boundaries of the property.

A motion was made by O'Hara and seconded by Rogen to approve Conditional Use Permit #07-82 with the conditions as stated. The motion passed unanimously, Twedt absent.

ITEM 5. CONDITIONAL USE PERMIT # 07-83 to allow a contractor's shop.

Legal Description - Lot 4 Block 4 Brower Addn. in Section 27-T102N-R51W
Location - 26062 Ashley Unit # 5 South edge of Hartford
Petitioner / Owner- Ronald Pester / Allan Stockwell

General Information

Present Zoning - I-1 Light Industrial
Existing Land Use - Commercial
Parcel Size - N/A

Report by: Scott Anderson

Staff Analysis

The applicant is requesting a conditional use permit to allow a contractor's shop. The proposed shop would be operated out of unit #5 of the existing multi-unit structure located on the subject property. The applicant has indicated that there would be no outdoor storage.

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.

This is an industrial area, so the proposed use blends in quite well and should not impact the use and enjoyment of the property in the area. This type of business will not impact property values. There will be no outdoor storage.

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

This expanded use is located in an existing commercial/industrial area. The proposed use should not impede future or existing industrial development in the area.

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

Ashley Street provides access to the site. Ashley Street is constructed as a gravel road. The Planning

Commission has encouraged this development to hard surface the interior roads. Property owners within the development have been pursuing this. Drainage and other needed facilities all appear to have been provided.

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

The applicant is required to provide two (2) spaces for each three (3) employees. There is an existing large paved and graveled parking area that will accommodate approximately four (4) vehicles. Staff will recommend that a minimum of four (4) off street parking spaces be provided and maintained.

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 applicant is conducting a business that may periodically produce some noise. The area is located within an industrial area and should not be out of line with noises typically found in an industrial area.

Staff finds that the proposed use is appropriate for this commercial area, provided adequate parking can be provided. The recommended conditions of approval will ensure that harmonious development will occur.

Recommendation

Staff recommended approval of Conditional Use Permit #07-83 to allow for a contractor's shop with the following conditions.

- 1) There shall be no outdoor storage.
- 2) That the business operator obtains and maintains a South Dakota sales tax license.
- 3) Any new exterior lighting shall be shoe box style that directs the lighting downward.
- 4) That a minimum of four (4) off-street parking spaces shall be provided. The applicant shall continually meet the parking requirements outlined in Article 15 of the Zoning Ordinance.
- 5) All signs must meet the requirements of Article 16 of the Minnehaha County Zoning Ordinance.

A motion was made by O'Hara and seconded by Rogen to approve Conditional Use Permit #07-83 with the conditions as stated. The motion passed unanimously, Twedt absent.

ITEM 6. CONDITIONAL USE PERMIT # 07-84 to allow an outdoor storage yard.

Legal Description - Lot 7 Block 3 Brower Addn. in Section 27-T102N-R51W

Location - 46319 Jeffrey St. South edge of Hartford

Petitioner / Owner- Wayne Buseman

Item 6 was placed on the regular agenda.

ITEM 7. CONDITIONAL USE PERMIT # 07-85 to allow an outdoor recreation facility.

Legal Description - Hovde Addn. SW1/4 in Section 22-T104N-R48W

Location - 24774 481st Ave. 7 miles east of Dell Rapids

Petitioner / Owner - Steve Munk

General Information

Present Zoning - A-1 Agricultural

Existing Land Use - Residential

Parcel Size - 9.25 Acres

Report by: Pat Herman

Staff Analysis

The site is located approximately seven miles east of Dell Rapids. The surrounding land use is agricultural with a few scattered acreages. The property is less than 10 acres in size and accommodates a house and numerous sheds, lean-tos and bins.

This conditional use permit is to allow an outdoor recreational facility – a seasonal pumpkin festival. The festival gives people the opportunity to go to a farmstead and pick pumpkins. The festival only operates on the weekends between September and November, when the pumpkins are ready for harvest. Some additional activities are offered to entertain children, such as a mascot and small train that can be ridden

around the property. The petitioner estimates average weekend attendance at 40 people, with eight being highest number of vehicles on the premises at any one time

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.

This property is located in an area of the county which has few rural residential dwellings. The limited operation time and the small number of attendants should not impact the immediate properties nor influence property values.

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

The predominate use of land in the area is agricultural and the festival promotes an agricultural product. This festival has no impact on the farming activities in the area.

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

Access to the site is from an existing driveway which exits from 481st Ave., a township gravel road. Staff attempted to contract Logan Township regarding the traffic generated by this activity, however phone calls were not returned. Planning has not received any complaints about the traffic generated by the festival.

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

This ten acre parcel provides plenty of parking for the festival. No parking along 481st Ave. should 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.

The festival should not generate offensives to constitute a nuisance.

Recommendation

Staff found that the seasonal nature of the activity and the limited attendance size will not negatively affect the surrounding land uses and recommended approval of Conditional Use Permit #07-85 with the following conditions:

- 1) The outdoor recreational facility shall consist of a pumpkin festival.
- 2) The festival shall cease to operate and Conditional Use Permit #07-85 be declared null and void when the owners of the property are no longer Steve and/or Connie Munk.
- 3) The festival shall only be held on the weekends between September 1st and November 30th.
- 4) The Planning Commission shall reserve the right to review Conditional Use Permit #07-85 if the Commission believes the festival has expanded to a size which negatively impacts the area.
- 5) No parking shall be allowed on 481st Avenue.

A motion was made by O'Hara and seconded by Rogen to approve Conditional Use Permit #07-85 with the conditions as stated. The motion passed unanimously, Twedt absent.

ITEM 8. CONDITIONAL USE PERMIT # 07-86 to transfer one residential building eligibility.

From – SE1/4 NW1/4 of Section 11-T130N-R51W

To – W1/2 NW1/4 of Section 11-T103N-R51W

Location – 3 miles south of Colton

Petitioner / Owner - Glen Krogstad

General Information

Present Zoning - A-1 Agricultural

Existing Land Use - Agriculture

Parcel Size - 40 Acres

Report by: Pat Herman

Staff Analysis

The property is located three miles south of Colton and a half mile north of Tri-Valley School. The surrounding land use is in agricultural production with scattered farmsteads. The petitioner is requesting to transfer one residential building eligibility from a land locked quarter-quarter to a location along Highway 149.

The petitioner's request is to move the eligibility to the W1/2 NW1/4. There is an existing dairy operation ¼ mile to the south, and allowing the eligibility in the SW1/4 NW1/4 could result in a house being built closer to that operation. Staff would recommend that the eligibility only be allowed in the NW1/4 NW1/4 which would only move the potential house closer to the petitioner's own cattle, not the neighbor's operation.

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.

Rural acreages always have some negative impact on farming operations. Restricting the eligibility to the NW1/4 NW1/4 will limit the effect on the existing dairy.

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

The request to transfer the eligibility is in conformance with density zoning and does not increase the allowed number of dwelling units in the quarter.

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

Access to the site will either be from Hwy 149 or 251st Street; but only one access should be allowed. With approval of the transfer, there will be two eligibilities in the quarter. Access should be limited to a shared driveway. The petitioner must get approval in writing from either the County Highway Department or Grand Meadow Township.

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

The minimum lot size of one acre will accommodate all parking needs associated with a single family dwelling.

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 single family dwelling should not generate a nuisance.

Recommendation

Staff found the request to be in conformance with density zoning and recommended approval of Conditional Use Permit #07-86 with the following conditions.

- 1) The eligibility shall be transferred from the SE1/4 NW1/4 to the NW1/4 NW1/4 of Section 11-T103N-R51W.
- 2) The property shall be platted and a right to farm notice covenant filed on the deed of the lot prior to the issuance of a building permit.
- 3) One access point, from either Highway 149 or 251st Street shall be allowed. This access point shall be shared by the dwelling units for both eligibilities located in the NW1/4 NW1/4.

A motion was made by O'Hara and seconded by Rogen to approve Conditional Use Permit #07-86 with the conditions as stated. The motion passed unanimously, Twedt absent.

REGULAR AGENDA

A motion was made by Bunde and seconded by O'Hara to approve the regular agenda, Items 3 & 6 added. The motion passed unanimously, Twedt absent.

Deferred from the August 27, 2007 meeting.

ITEM 3. CONDITIONAL USE PERMIT # 07-74 to allow a 300 animal unit concentrated animal feeding operation.

Legal Description – Tract 1 & 2 Nelson's Addition NW1/4 of Section 28-T102N-R47W
Location - 26012 486th Ave. 2 miles north of Valley Springs
Petitioner / Owner- Ronald Kuipers

General Information

Present Zoning - A-1 Agricultural
Existing Land Use - Agriculture
Parcel Size - 25.39 Acres

Report by: Phil Kappen

Staff Analysis

The subject property is located at the intersection of 260 Street and 481st Avenue, ½ mile north of the Valley Springs exit on I-90. The petitioner wishes to construct an open-face hog barn for 500 finisher hogs and will have about 20 cattle. The properties to the west, north and east are agricultural. To the south is vacant commercial property. The item had been deferred from the August meeting at staff's request, due to existing zoning violations on the property. The zoning violations have now been corrected and the petitioner is aware that no commercial use of the property is allowed in the future.

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 setback criteria for a 250 animal unit livestock facility is 660 feet. The closest residences, other than the petitioner's, are located approximately 2000 feet to the east, and 2600 feet to both the southwest and north. Thus, the facility easily meets the target setback criteria for the proposed facility size.

The facility will be rather close to the county highway, however, the use of a tree belt between the facility and the highway will aid in the dispersal of odors and will provide visual screening between the facility and the highway.

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

As has been noted, there is vacant commercial land to the south. That area, however, is separated from the proposed animal facility by at least the 660-foot criteria separation and by a small ridge. As the prevailing wind in the summer, when there is the greatest likelihood for any odor, is from the south, this will further reduce the probability of impact on the commercial development.

Staff has received a call from the property owners to the east, across County Highway 105, questioning their ability to build a home in the future. There is ample space on that property, however, to allow construction of a residence that meets the 660-foot target distance. The petitioner has also indicated that he plans to plant trees to the west and north of his home and the animal facility. A requirement for the proposed trees would aid in making the facility compatible with future land uses in the area.

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

Access to the property is via 486th Avenue (County Highway 105).

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

There is ample space on the subject property for any parking associated with the single-family residence and the proposed livestock facility.

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 petitioner has noted that the primary form of manure from the proposed facility will be solid. This results in reduced odor. The petitioner will use a stack pad to hold the manure until it can be applied to agricultural land. He has ample land between his own property and that of his father for the amount of projected waste from the facility.

All outdoor lighting should be of a shoebox style to direct light downward.

Recommendation

Staff finds that the proposed use is consistent with the types of uses found in an agricultural area, that the petitioner meets the target criteria for setback distances and that the use can be operated in a manner that minimizes the potential for impacts to other properties. Staff, therefore, recommends approval of conditional use permit # 07-74 with the following conditions:

1. The facility shall be limited to a maximum 300 animal unit CAFO for finisher swine and cattle.
2. The petitioner shall utilize a stack pad for waste and maintain the waste in a mainly solid consistency in order to reduce the potential for odors.
3. At a minimum, the petitioner shall plant trees on both the west and north sides of the facility. The petitioner shall prepare a planting plan showing the types of trees and number of trees rows for approval by the county planning staff.
4. All outside lighting shall be of shoebox style that directs light downward and prevents light spillage beyond the property boundaries.

Public Testimony

Mr. Kappen explained that the proper notification had not been sent to the surrounding land owners so the item needed to be deferred to the November 26th meeting.

A motion was made by O'Hara and seconded by Rogen to defer Conditional Use Permit #07-74 to the November 26th meeting. The motion passed unanimously, Twedt absent.

ITEM 6. CONDITIONAL USE PERMIT # 07-84 to allow an outdoor storage yard.

Legal Description - Lot 7 Block 3 Brower Addn. in Section 27-T102N-R51W

Location - 46319 Jeffrey St. South edge of Hartford

Petitioner / Owner- Wayne Buseman

General Information

Present Zoning - I-1 Light Industrial

Existing Land Use - Commercial

Parcel Size - 1.0 Acre

Report by: Scott Anderson

Staff Analysis

The applicant is requesting a conditional use permit to allow for outdoor storage. The applicant has been storing various items outdoors without the required conditional use permit. Staff received a complaint and contacted the applicant. He subsequently applied for the conditional use permit and paid a penalty for having materials stored outside prior to applying for and obtaining a conditional use permit.

On September 27, 2007, staff conducted a site inspection. Staff found one older pick-up, a semi trailer and wagon stored on the east side of the existing structure. Previously, there had been several 55 gallon drums, which the applicant had either moved into the building or disposed of them. The applicant has indicated that he would like to fence the property and continue to store certain items in the fenced in area.

The Brower Addition consists of mostly commercial and industrial buildings and uses. There are contractor's equipment yards located to the east and north of the subject property. Several buildings of mini-storage units are located directly to the west. The applicant's proposed use is similar to the existing uses in the area.

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.

This is an industrial area, so the proposed use blends in quite well and should not impact the use and enjoyment of the property in the area. This type of business will not impact property values, provided a proper fence meeting the County's requirements is installed and maintained.

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

This expanded use is located in an existing commercial/industrial area. The proposed use should not impede future or existing industrial development in the area.

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

Jeffrey Street provides access to the site. Jeffrey Street is constructed as a gravel road. The Planning Commission has encouraged this development to hard surface the interior roads. Property owners within the development have been pursuing this. Drainage and other needed facilities all appear to have been provided.

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

The applicant is required to provide two (2) spaces for each three (3) employees. There is an existing large paved and graveled parking area that will accommodate approximately 10 vehicles. Staff will recommend that a minimum of six (6) off street parking spaces be provided and maintained.

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 applicant is conducting a business that may periodically produce some noise. The area is located within an industrial area and should not be out of line with noises typically found in an industrial area.

Staff finds that the proposed use is appropriate for this commercial area, provided adequate parking can be provided. The recommended conditions of approval will ensure that harmonious development will occur.

Recommendation

Staff recommends approval of Conditional Use Permit #07-84 to allow for an outdoor storage yard with the following conditions.

- 1) That all outdoor storage shall be enclosed with a 6 foot high screening fence that shall provide at least 90% opacity over the full height of the fence.
- 2) That the business operator obtains and maintains a South Dakota sales tax license.
- 3) Any new exterior lighting shall be shoe box style that directs the lighting downward.
- 4) That a minimum of five (5) off-street parking spaces shall be provided. The applicant shall continually meet the parking requirements outlined in Article 15 of the Zoning Ordinance.
- 5) All signs must meet the requirements of Article 16 of the Minnehaha County Zoning Ordinance.

Public Testimony

Mr. Anderson stated the petitioner had called and asked that this item be deferred for one month.

A motion was made by O'Hara and seconded by Rogen to defer Conditional Use Permit #07-84 to the November 26th meeting. The motion passed unanimously, Twedt absent.

ITEM 9. PRELIMINARY PLAN REVISION #07- 05 to change driveway requirements.

Legal Description - Tract 3 Bruns Addition S1/2 in Section 15-T101N-R48W
Location - 1.5 miles south of Brandon
Petitioner / Owner- David Wells

General Information

Present Zoning - A-1 Agricultural
Existing Land Use - Residential
Parcel Size - 25.63 Acres

Report by: Scott Anderson

Staff Analysis

On December 12, 2006, the County Commission approved the original preliminary plan of the Bruns Addition with the following conditions:

1. That prior to County Board approval of the preliminary plan all of the existing platting pattern be shown, including labeling the unplatted areas surrounding the proposed subdivision.
2. That prior to County Board approval of the preliminary plan, the location of the existing rock outcroppings shall be shown on the plan or provided as separate information.
3. That prior to County Board approval of the preliminary plan, an erosion control plan and drainage/grading plan shall be submitted to the Planning Department for review and approval.
4. Access to Tracts 3, 4, 5, 6, & 7 shall only be allowed from Bruns Place.

The owner of Tract 3 is now requesting a revision to the Preliminary Plan to revise condition #4. This condition requires the driveway approach to Tract 3 to come off of Bruns Place. The reason for this requirement revolves around better access management. Good traffic engineering practices suggest that it is safer to minimize the number of approaches coming off of an arterial or minor arterial road. Two of the tracts in Bruns addition have frontage on S.D. Highway 11, four (4) lots have frontage on 265th Street and one (1) lot has frontage on 482nd Avenue. Following safe traffic engineering practices, staff recommended as a condition of approval that as many lots as possible take access only from Bruns Place. This reduces the number of approaches coming off of 265th and S.D. Highway 11, both significantly traveled roads.

There is an old approach located on Tract 3, which at one time provided access to the former mining activities located on the property. The applicant is requesting to eliminate the requirement that Tract 3 take access only off of Bruns Place. The applicant is in the process of constructing a single family residence on the site and the location of the house is closer to the original approach onto the property. The applicant was made aware of the driveway approach requirements when the building permit was issued. It should also be noted that Bruns Place has not been constructed. Surety has been posted for the construction of Bruns Place and there is another 14 months left on the maximum allowable time before the surety is called for construction.

Staff has contacted Split Rock Township to solicit their opinion on an approach for Tract 3 onto 265th Street. On October 10, 2007, Paul Eliason, a Township Supervisor, contacted the Planning Department and indicated that the Township had met and discussed allowing this approach to remain. They indicated that they also wish to limit the number of approaches onto 265th Street. They support staff's original intent of controlling access onto 265th Street. They further indicated that they would be agreeable to allowing continued temporary use of the existing approach until Bruns Place is constructed. Once Bruns Place is constructed, they would like to see the driveway to Tract 3 off of Bruns Place.

While staff can understand that it is more convenient for the applicant to use the existing approach, as it is closer to the residence under construction, continued use of the approach off of 265th is not in the public's best interest. Limiting the number of approaches better serves the public and provides more safety for those traveling on 265th Street. The applicant was made aware of this requirement before construction began and before the building permit was issued. The location of the house could have been altered and moved closer to Bruns Place. The applicant should be working with the developers of the subdivision to move the construction of Bruns Place along. As a matter of safety, staff can not support the request to revise the original preliminary plan of Bruns Addition to allow Tract 3 direct access onto a higher traveled road.

Recommendation

Staff recommended that the original conditions of approval stay in effect and that Tract 3 be required to take access from Bruns Place and that no access off of 265th be allowed.

Public Testimony

The petitioner, David Wells, stated that there were obstacles which limit where a house can be placed on this lot. The site used to be a quarry and there is granite throughout the property. They drilled through 450 feet of solid granite to put in a well. Mr. Wells explained he is locating his house on the higher part of the lot. This location is needed to allow some slope to use gravity to drain the septic system into the tank. A septic system could not have been installed elsewhere on the lot due to the granite. In most of the test holes, they could only dig down 2 feet before hitting rock.

Commissioner Twedt joined the meeting.

Mr. Wells explained that he is also trying to preserve as many of the trees on the site as possible. Many of them are located on the west side of the lot. He presented a number of photos of this lot. He noted that his house is being built approximately 175-200 feet from 265th St., but it is 850 feet east of Bruns Place. The frontage of his lot along 265th St. is over 1400 feet. Frontage along Bruns Place is only 370 feet. Mr. Wells noted that closest existing driveway on 265th St. was over 4000 feet to the east. He reiterated that he cannot place his house closer to Bruns Place because of the septic issues.

Commissioner Rogen asked if Mr. Wells had been aware of the driveway requirements when he bought the property. Mr. Wells said no, that no driveway restrictions were written in the purchase agreement, nor were they mentioned at the auction. The only thing which was mentioned was that all the lots with frontage on Bruns Place were required to contribute to the construction cost of that road. Mr. Anderson noted that Mr. Wells was told about the access issue when he applied for a building permit. Mr. Wells stated that the first he heard of the restriction of his driveway onto Bruns Place was when he applied for a foundation permit. He is facing a large cost to construct an 850 foot driveway.

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

Commissioner Bunde stated that while she sympathized with the petitioner, there is a need to control driveways and limit access points. Unfortunately, there is really nothing the Planning Commission can do about information not being given at the time of sale. Commissioner South noted that is very rare that a township takes a stand, and Split Rock Township does not want this driveway. That weights heavily with him. Commissioner Steinhauer agreed that it was imperative to support the Township.

A motion was made by O'Hara and seconded by Rogen to recommend denial of Preliminary Plan Revision #07-05. The motion passed unanimously, Twedt abstaining as she joined the meeting in the middle of this item.

ITEM 10. REVOCATION OF CUP #90-17 – to allow trailer assembly
Legal Description - N200' Ruud Tr. 1 NE1/4 of Section 28-T102N-R51W
Location – South edge of Hartford
Petitioner / Owner- Lil Matthies

General Information

Present Zoning - C Commercial
Existing Land Use - Commercial
Parcel Size - 1.37 Acres

Report by: Phil Kappen

Staff Analysis

A conditional use permit for trailer assembly and repair was approved for Red Bead Welding at this location in 1990. That permit was approved with the following conditions:

1. Outside storage shall be located west of the building and there shall be an opaque screen around the storage area so equipment and material associated with the business cannot be viewed by the public.
2. The building, driveway and parking lot shall be set back from the highway right-of-way a minimum of 30 feet. This 30 foot setback shall be maintained in grass and landscaping, including a minimum of 8 trees along the front property line.
3. There shall be one driveway approach which shall also serve future development to the south.

The property has been out of compliance with the permit conditions for sometime. Staff has contacted the property owner about bringing the property into compliance. While there may have been some progress in the back (west) portion of the lot, there has been little visible progress in the front of the lot. A screening fence had been built extending south from the southwest corner of the building to the southern property line. This fence, however, has not been properly maintained and there is now a considerable amount of equipment and materials stored east of this fence towards the road. With development now occurring to the north and west of the property, in the city of Hartford, the required screening must now be extended around the other sides of the storage area. The property is out of compliance with condition number one.

Any trees planted along the east edge of the property have died. The property is therefore out of compliance with condition number three.

There are also numerous public nuisance violations on the property. These include unlicensed, inoperable or partially dismantled vehicles, scrap, vehicle parts such as tires and truck axles stored outside of the permanent building on the property. There have been multiple violations of a similar nature on this property in the past.

The petitioner has indicated that they will attempt to bring the property into compliance and, after they have done so, come in and apply to amend the conditional use permit to change the approved outside storage area.

Recommendation

Staff finds that the property is in obvious violation of the conditions of CUP#90-17 and, if the property owner has not made great strides towards correcting the violations on the property by the date of the Planning Commission meeting, staff recommends revocation of CUP#90-17. Staff will be reviewing this property prior to the meeting to determine what progress has been made in addressing the violations.

Public Testimony

Mr. Kappen explained that the owner, Lil Matthies had been very cooperative and had made progress on the clean up. She has plans to expand the screening fence to allow a greater storage space. Ms. Matthies stated that she is continuing to bring the property into compliance but needs more time. She is not sure she will be able to get the fence in place before the freeze sets in. Mr. Kappen recommended that the owner be given more time.

Stating that the property owner was working with the County to bring the property into compliance, a motion was made by Twedt and seconded by Rogen to delay any action until the April 28, 2008 meeting. The motion passed unanimously.