

**MINUTES OF THE JOINT MEETING
MINNEHAHA COUNTY & SIOUX FALLS PLANNING COMMISSIONS
November 26, 2007**

A joint meeting of the County and City Planning Commissions was held on November 26, 2007 at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

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

CITY PLANNING COMMISSION MEMBERS PRESENT: Theresa Boysen, Pam Breidenbach, Meredith Larson, Jessie Schmidt, David Van Veldhuizen, Anita Wetsch.

STAFF PRESENT: Scott Anderson, Phil Kappen, and Pat Herman – County Planning;
Shawna Goldammer – City Planning

The City Planning Commission was chaired by Meredith Larson. County Planning Commission Chair Don South presided over the meeting.

ITEM 1. MINUTES – October 22, 2007

A motion was made for the City by Boysen and seconded by Breidenbach to approve the minutes. The motion passed unanimously. Same motion for the County by Cypher and seconded by O'Hara. The motion passed unanimously.

ZONING BOARD OF ADJUSTMENT

A motion was made for the City by Breidenbach and seconded by Van Veldhuizen to convene as the Zoning Board of Adjustment. The motion passed unanimously. Same motion for the County by Cypher and seconded by O'Hara. The motion passed unanimously.

ITEM 2. VARIANCE # 07-05 to allow a 5 foot front yard setback.

Legal Description - Lot 14 Block 4 Split Rock Heights 2nd Addition in Section 19-
T101N-R48W
Location - 6509 E. Quartzite Dr. 1/8 mile east of Sioux Falls
Petitioner / Owner- Howard Baartman

General Information

Present Zoning - RR Rural Residential
Existing Land Use - Residential
Parcel size- 1.25 Acres

Report by: Scott Anderson

Staff Analysis

The applicant is requesting a variance to reduce the minimum front yard setback from 30 feet to 5 feet for the purpose of adding a 5th & 6th attached garage stall to the existing residence. The applicant has indicated that the drive-under garage is too damp for his classic car and this has resulted in rust on the car.

On November 13, 2007 staff conducted a site visit and met with the property owner. The property does slope gently to the south. It appears based on the site visit and site plan provided to staff, that there is approximately 150 feet of area to the south where a detached garage could be built.

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 double stall garage up to 1200 square feet in area could be constructed. In fact, it appears that there is room on the south side of the existing residence 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 four (4) stall garage. An alternate location could be found on the large 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 a detached garage on the south side of the existing single family residence.

Furthermore, the encroachment into the setback area would make installing almost any type of sidewalk impossible. While there is no sidewalk in this subdivision today, that is not to say that in 10, 15 or 20 years there might be sidewalk installed. The proposed reduction would impede the future pedestrian transportation network.

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 a drive-under double stall garage that is damp 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 additional stalls 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 #07-05 to reduce the front yard setback from 30 feet to 5 feet.

Public Testimony

Mr. Anderson explained that the right-of-way for Overland Pass is 66 feet wide. The roadway itself is approximately 36 feet wide.

The petitioner, Howard Baartman, stated that had he known twelve years ago he would need more garage space he would have planned better. At the time he built the house he thought four garage stalls would be enough. He would be willing to reduce the size of his requested garage to 16 feet. Then the garage wall would be 40 feet from the roadway. Mr. Baartman stated that there is no view problem and no utilities on his side of Overlund Pass. The septic system and lawn

sprinklers are in the back yard, so construction there would be problematic and more costly. He gets water in the bottom garage and there is a humidity problem.

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

Commissioner Wetsch confirmed that the petitioner is asking to reduce the required setback of 30 feet to 5 feet. With Mr. Baartman's proposed garage size reduction, the request would be for a setback of 14 feet. Commissioner Bunde stated that approval of this variance would be inconstant with past practices of the Planning Commission. Commissioner South noted that this street, once annexed into Sioux Falls, could become an arterial. Commissioner Steinhauer stated that the ordinance clearly stated that the Planning Commission could only approve a variance if all of the five conditions were met, and they were not in this case.

A motion was made for the City by Van Veldhuizen and seconded by Wetsch to deny Variance #07-05. The motion passed unanimously. Same motion for the County by Steinhauer and seconded by Bunde. The motion passed unanimously.

JOINT PLANNING COMMISSIONS

A motion was made for the City by Wetsch and seconded by Schmidt to adjourn as the Zoning Board of Adjustment and reconvene as the Planning Commission. The motion passed unanimously. Same motion for the County by Cypher and seconded by O'Hara. The motion passed unanimously.

NEW BUSINESS

A. Discussion on amendments to the zoning ordinance.

Mr. Anderson stated that the Planning Department had received a request to amend the Joint Zoning Ordinance A-1 Agricultural District as it pertains to telecommunication towers. That request and responding memorandum to the Planning Commission follow. Mr. Anderson discussed the information contained in the memo. Ms. Goldammer stated that the Sioux Falls Zoning Ordinance has the same wording under the AG Agricultural District. She noted that the tower is being placed on a piece of property which is still a rural farm. The land surrounding that parcel is a developing area. Commissioner Wetsch stated that it was appropriate that the two ordinances were consistent. Commissioner Steinhauer stated that either telecommunication towers should require a conditional use permit, and thereby require notification, or no changes should be made. Commissioner VanVeldhuizen felt that it was good that the tower company was ahead of the development in this area. It is much harder to go back and add a tower after an area is fully developed. He added that the tower may stand out now, but as the area develops the tower's impact will lessen. The Joint Commissions were not in favor of amending the ordinance.

MEMORANDUM

DATE: November 9, 2007
TO: Joint Planning Commission
FROM: Scott Anderson
RE: Review of Section 3.03 (i) Telecommunications
Tower in the A-1 Zoning District

The 2002 Revised Joint Zoning Ordinance for Minnehaha County and the City of Sioux Falls allows a telecommunications tower as a permitted special use in the A-1 Agricultural District if the following conditions are met:

Section 3.03 (i)

- (1) A minimum distance of 300' from the telecommunications tower to any residential zoning district, existing residential use except a farmstead, or future residential area designated on the adopted Land Use Plan, measured from the base of the telecommunications tower to the property line.
- (2) A minimum distance of a ½ mile between telecommunications towers measured from the base of one telecommunications tower to the base of another.
- (3) Stealth design approved by the County Planning Director.

If these conditions cannot be met, a conditional use permit is required. Section 3.03(i) has not been amended since the joint ordinance was adopted in 2002. The conditions of this section are identical to those found in the Sioux Falls Zoning Ordinance AG Agricultural District Section 15.07.030(f).

In accordance with joint zoning ordinance, a building permit was issued in July 2007 to allow a 126' monopole tower on a 38 acre parcel which is zoned A-1 Agricultural. Located at the intersection of Six Mile Road and E. 10th St., the property is adjacent to the Arbor's Edge planned development. As outlined above, the base of the tower must be a minimum 300' from an existing residential development or from a future residential area designated on the Land Use Plan. The surrounding properties and the applicant's property are all designated for residential development. As interpreted by the Office of the State's Attorney, the 300' foot setback is applicable from the surrounding property lines, but does not apply to the applicant's own property. The setback is intended to provide a buffer to the abutting neighbors. It is understood that the applicant comprehends any restraints or hardships that may be caused to the development of his own lot by the placement of the tower. The applicants have met all three conditions and will be constructing the tower 300' from the property lines.

Scott McMahan with Arbor's Edge, LLC, has submitted a written request asking that this portion of the joint zoning ordinance be considered for amendment. A copy of that letter is attached. Mr. McMahan believes homes in direct view of the tower will have their property values adversely affected. Staff consulted the equalization office on this issue. The equalization office has not seen any impact on the property values of parcels in close proximity to telecommunication towers, nor have they registered any slowing or decline in growth around the towers. Proximity to telecommunication towers is not a considered factor during the process of property assessment given the abundance of these towers and the acceptance of their existence in our daily lives.

Mr. McMahon is requesting that the joint zoning ordinance be amended to require that notification be sent to all property owners that are within 500' of the property on which the tower is being constructed. This notification would allow the adjoining property owners to have input into the issue.

Within the zoning ordinance there are a number of uses which require notification of neighboring property owners:

- Conditional Use Permits – property owners within 500 feet;
- Rock, Sand and Gravel Extraction – property owners within one mile or the 30 nearest property owners, whichever is less and also the 500 feet conditional use permit notification; and
- Temporary Uses – property owners within 600 feet.

The planning staff requests that the joint planning commissions consider how they would like to proceed with this request to amend the joint zoning ordinance. There are several options the commissions may wish to discuss during the review of the request.

- Make no changes to the ordinance.
- Increase the setback requirement.
- Remove towers as a permitted special use and always require a conditional use permit.
- Make towers similar to a temporary use by requiring application two months in advance, notify property owners within 500 feet, and, if there are objections, scheduling the item for a hearing before the planning commissions.

November 1, 2007

Minnehaha County Planning & Zoning

Administration Building, 3rd Floor

415 N. Dakota Ave.

ATTN: Scott Anderson

Dear Minnehaha County Planning Commissioners,

Please consider this letter a formal request to amend the county's current ordinance regarding adjacent land owner notification of proposed cell phone tower construction.

Arbors Edge, LLC is the owner of approximately 260 acres of residential property located north of Willow Run and immediately east of the Van Beek property (please refer to enclosed map).

Having a significant investment in the Sioux Falls community, we were disturbed to find that a cell phone tower was being constructed in close proximity to future home sites at Arbors Edge. No notification of this use was provided to us, and we received no calls from the property owner or tower owner about the proposed use. As a course of our approvals, Arbor's Edge (a proposed residential community at that time) was required to notify residents as far away as one mile, yet a 100' tower can be constructed in Minnehaha County without notifying anyone.

According to county planner, Scott Anderson; a cell phone tower is a permitted use with no notification required within 300' of the tower base. Unfortunately, a 100' tower impacts much more than a 300' area centered at the base. These towers are visible from much further away, and there is no doubt that this use will adversely impact the property value of those Arbor's Edge homes that directly view it.

We employ the commissioners to consider an amendment to the ordinance that requires this type of use to provide notification to any property owners that are within 500' of the subject property. This will provide adjoining property owners with an opportunity to add concerns and possible solutions that will better direct this adverse use.

It is unfathomable that this tower was allowed to be built within such close proximity to a residential use without so much as a letter of notification to us as property owners. Although we have not conceded our position on the flawed process that was used to approve this use in its current location, we certainly trust that the ordinance will be swiftly amended to prevent future situations such as this one.

Respectfully,

Scott M. McMahon

Arbor's Edge, LLC

C: Jeff Schmidt, Sioux Falls Planning Department