

MINUTES
HARVEY COUNTY REGIONAL PLANNING COMMISSION
HARVEY COUNTY BOARD OF ZONING APPEALS
Harvey County Courthouse
Community Room
May 4th, 2010
7:00 PM

- Members Present:** Clifford Kirk, Wayne Alison, Bonnie Wendling, Larry Goering, Carroll Harder, Robert TenEyck, Al Heine, Jack Bender, Larry Emmel & Alan Beam
- Members Absent:** Ron Peters, Harlan Foraker, Dorothy Thiessen, Chad Fuqua & William Wilson
- Staff Present:** Scott Davies, Planning & Zoning Administrator
- Others Present:** Wilbur Kurr, Brian Meier, Amy Simon, Linwood Sexton, Debra Ary, Lynn Moore

At 7:00 pm Chairman Kirk called the meeting to order.

1. Chairman Kirk asked for any corrections to the April 6th, 2010 minutes, there being none, Mr. Harder moved to approve the minutes and Mr. TenEyck seconded, motion carried.
2. Staff Report: Four building permits were issued during April for a total construction estimate of \$200,610. One single family residence
3. **Public Hearing, Case No. VAR 32-23-2W** *Request by the City of Wichita, Water Utilities for a variance from the minimum setback from a county road in the A-1 Agricultural zoning district.*

Staff Report: With this particular request you will be sitting as the Board of Zoning Appeals. The authority of the Board of Zoning Appeals is somewhat different from that of the planning commission in that actions taken are the final decision. These matters are not sent on to the Board of County Commissioners. The Board of Zoning Appeals is authorized to issue variances to the regulations in instances in which it is felt the variance would not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the zoning regulations would, in an individual case, result in an unnecessary hardship, provided the spirit of the regulations is observed, public safety and welfare secured, and substantial justice done.

An applicant must show that the property in question was acquired in good faith; and, where by reason of exceptional narrowness, shallowness, or shape of the specific piece of property at the time of the effective date of the district zoning regulations, or where by reason of exceptional topographical conditions or other extraordinary or exceptional circumstances that the strict application of the terms of the zoning regulations actually prevent the use of the property in the manner similar to that of other property in the zoning district where it is located.

In this particular instance, an application has been submitted by the City of Wichita, Water Utilities for a variance from Article 9.07 of Harvey County's Unified Development Code (Zoning and

Subdivision regulations). The applicant is requesting a variance from the requirement that any structure must be located at least 150 feet from the center of a county maintained road.

I have reviewed the application in light of the specific criteria to be considered for any variance request. Those criteria and my comments are as follows:

1. ***Whether or not the variance requested arises from such conditions which are unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or applicant.***

This particular parcel is zoned A-1 for agricultural uses. There are no conditions that are unique to the property either geographically or historically. The parcel is an easement owned by the applicant that contains approximately 5 acres and is on land that is cropland. The area around the wellhouse is to be fenced which takes the land inside the fenced area including the well house out of production. The current setback requirement from a county road in the A-1 district is 150' from the center of the road. However, the applicant wishes to construct a wellhouse building approximately 125 feet from the center of the road in order to minimize the amount of cropland that is taken out of production.

2. ***Whether or not the granting of the variance will adversely affect the right of adjacent property owners or residents.***

In this particular instance, I do not feel the granting of the variance would adversely affect the right of adjacent property owners or residents.

3. ***Whether or not the strict application of the provisions of the zoning regulations from which the variance is requested will constitute an unnecessary hardship upon the property owner represented in the application.***

It is difficult to say whether or not the strict application of the zoning regulations would cause an unnecessary hardship for the City of Wichita. However, the strict application of the zoning regulations in this case would mean more agricultural land taken out of production.

4. ***Whether the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.***

The granting of the variance should not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare. There is always concern when a structure is located near an intersection related to site lines and being able to see oncoming traffic. It is my opinion that a 125 feet setback is adequate to maintain visibility at the intersection. In addition, there are stop signs on the north and south sides of SW 36th, on Golden Prairie Rd., so they are not unmarked intersections.

5. ***Whether the granting of the variance desired will not be opposed to the general spirit and intent of the zoning regulations.***

I feel the granting of the variance would not be opposed to the general spirit and intent of the zoning regulations because of the unique circumstances associated with the set up of the water treatment building site.

In summary, I would have no objections to a variance being granted for the reasons stated above.

Enclosed are copies of an aerial photo showing the parcel in question and a copy of a map showing the location of the property in relation to the rest of Harvey County.

The Chairman requested comment from the applicant. Speaking for the City of Wichita's request was Brian Meier with Burns and McDonnell. Mr. Meier presented a map showing the locations of the well houses as part of the Aquifer, Storage, and Recovery project for the City of Wichita. He said that it was their intent to reduce the amount of cropland taken out of production by keeping the buildings which will have a fence around them to as close to the intersection or road as possible and keep it safe. He mentioned that KDHE had setback requirements to prevent pollution problems to the wellheads. He said that many of the new well houses would be replacing old ones that would be removed.

Mr. Kirk asked why they are building new well houses, Mr. Meier said that because the new wells would be producing and recharging, they needed a new well and well house and that the old well houses would be demolished.

Mr. Goering asked about farming around the fenced area. Mr. Meier said they were trying to prevent narrow strips where the large farming equipment could not get to.

Mr. Heine asked about the status of the ASR project in light of what has been in the news lately. Debra Ary, Wichita Water Utilities Supervisor addressed the question. She said that at this time the project is being evaluated by an engineering firm and a report would be released later this month. She said certain things such as permitting are continuing as some construction that was already started continues.

Mr. Harder expressed concern about the City of Wichita continuing to take water and the results it puts on the City of Newton and whether there would be adequate water in the future for those in Harvey County.

The Chairman then opened up the public hearing. There were none to speak in favor and none to speak against. The Chairman closed the public hearing.

The Chairman opened it up for discussion from the Board. Mr. Allison said that the recharge project would help block the salt plume coming in from Reno County and he felt the project was overall a benefit for everyone.

Mr. Harder said he believed that they (City of Wichita) should comply with the County's setback regulations because that is why they are in place.

Mr. Goering said he thought that the location was best tucked in the corner to eliminate small strips around the fenced area that makes it very difficult to farm.

Mr. TenEyck asked about setbacks from the old wells. Mr. Meier said that KDHE regulates setbacks to prevent pollution into the new wells.

The Chairman asked for anymore comments or questions from the Board. There being none, Mr. Bender moved to approve the request based on numbers 2, 4, &5 of the staff report, Mr. Emmel seconded. The Chairman called for a vote, the vote was 7 for and 2 opposed, motion carried.

- 4. Public hearing Case No. VAR. 27-24-2W** *Request by the City of Wichita, Water Utilities for a variance from the minimum setback from a county road in the A-1 Agricultural zoning district.*

With this particular request you will be sitting as the Board of Zoning Appeals. The authority of the Board of Zoning Appeals is somewhat different from that of the planning commission in that actions taken are the final decision. These matters are not sent on to the Board of County Commissioners. The Board of Zoning Appeals is authorized to issue variances to the regulations in instances in which it is felt the variance would not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the zoning regulations would, in an individual case, result in an unnecessary hardship, provided the spirit of the regulations is observed, public safety and welfare secured, and substantial justice done.

An applicant must show that the property in question was acquired in good faith; and, where by reason of exceptional narrowness, shallowness, or shape of the specific piece of property at the time of the effective date of the district zoning regulations, or where by reason of exceptional topographical conditions or other extraordinary or exceptional circumstances that the strict application of the terms of the zoning regulations actually prevent the use of the property in the manner similar to that of other property in the zoning district where it is located.

In this particular instance, an application has been submitted by the City of Wichita, Water Utilities for a variance from Article 9.07 of Harvey County's Unified Development Code (Zoning and Subdivision regulations). The applicant is requesting a variance from the requirement that any structure must be located at least 150 feet from the center of a county maintained road.

I have reviewed the application in light of the specific criteria to be considered for any variance request. Those criteria and my comments are as follows:

- 1 Whether or not the variance requested arises from such conditions which are unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or applicant.***

This particular parcel is zoned A-1 for agricultural uses. There are no conditions that are unique to the property either geographically or historically. The parcel is an easement owned by the applicant that contains approximately 5 acres and is on land that is cropland. The area around the wellhouse is to be fenced which takes the land inside the fenced area including the well house out of production. The current setback requirement from a county road in the A-1 district is 150' from the center of the road. However, the applicant wishes to construct a wellhouse building approximately 140 feet from the center of S. Halstead Rd.

- 2 Whether or not the granting of the variance will adversely affect the right of adjacent property owners or residents.***

In this particular instance, I do not feel the granting of the variance would adversely affect the right of adjacent property owners or residents.

- 3 Whether or not the strict application of the provisions of the zoning regulations from which the variance is requested will constitute an unnecessary hardship upon the property owner represented in the application.***

It is difficult to say whether or not the strict application of the zoning regulations would cause an unnecessary hardship for the City of Wichita. However, the strict application of the zoning regulations in this case would mean more agricultural land taken out of production.

- 4 Whether the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.***

The granting of the variance should not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare. There is always concern when a structure is located near an intersection related to site lines and being able to see oncoming traffic. It is my opinion that a 140 feet setback is adequate to maintain visibility at the intersection. This site is at the S.W. corner of the intersection of S. Halstead Rd. and SW 84th.

5 Whether the granting of the variance desired will not be opposed to the general spirit and intent of the zoning regulations.

I feel the granting of the variance would not be opposed to the general spirit and intent of the zoning regulations because of the unique circumstances associated with the set up of the water treatment building site.

In summary, I would have no objections to a variance being granted for the reasons stated above.

The Chairman asked for comment from the applicant. Mr. Meier said the old well house would be demolished and the new one located to the northeast of the old one. He said this would also reduce the amount of agricultural land used, and in addition, keep the well house and fenced area in the corner of the property.

Mr. Bender asked if the old service drive would be used. Mr. Meier said that it would be closed and a new drive would come off of SW 84th from the north. Mr. Bender asked if the fenced area would include the old drive. Mr. Meier said that it would.

The Chairman opened up the public hearing portion of the request. There were no comments in support of the variance. There was one letter of opposition from Johnnie L. Holle, adjacent landowner read by the Chairman. Ms. Hollie objected to the approval of the variance on the basis that the City of Wichita did not get the location of their well head in the correct location and it should be their responsibility to correct. She said that no more additional water resources should be allowed to the City of Wichita. Finally in her letter she said that the citizens of Harvey County are not benefitting from the operations of the City of Wichita.

There being no more public comment, the Chairman closed the public hearing.

The Chairman asked for comment from the Board. There were no comments. At this time, Mr. Bender moved to approve the variance request based on numbers 2, 4, & 5 of the staff report, Mr. Goering seconded. The Chairman called for a vote, there were 7 for and 2 opposed, motion carried, variance was approved.

5. Public hearing Case No. VAR. 23-24-3W Request by the City of Wichita, Water Utilities for a variance from the minimum setback from a county road in the A-1 Agricultural zoning district.

With this particular request you will be sitting as the Board of Zoning Appeals. The authority of the Board of Zoning Appeals is somewhat different from that of the planning commission in that actions taken are the final decision. These matters are not sent on to the Board of County Commissioners. The Board of Zoning Appeals is authorized to issue variances to the regulations in instances in which it is felt the variance would not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the zoning regulations would, in an individual case, result in an unnecessary hardship, provided the spirit of the regulations is observed, public safety and welfare secured, and substantial justice done.

An applicant must show that the property in question was acquired in good faith; and, where by reason of exceptional narrowness, shallowness, or shape of the specific piece of property at the time

of the effective date of the district zoning regulations, or where by reason of exceptional topographical conditions or other extraordinary or exceptional circumstances that the strict application of the terms of the zoning regulations actually prevent the use of the property in the manner similar to that of other property in the zoning district where it is located.

In this particular instance, an application has been submitted by the City of Wichita, Water Utilities for a variance from Article 9.07 of Harvey County's Unified Development Code (Zoning and Subdivision regulations). The applicant is requesting a variance from the requirement that any structure must be located at least 150 feet from the center of a county maintained road.

I have reviewed the application in light of the specific criteria to be considered for any variance request. Those criteria and my comments are as follows:

- 1 Whether or not the variance requested arises from such conditions which are unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or applicant.***

This particular parcel is zoned A-1 for agricultural uses. There are no conditions that are unique to the property either geographically or historically. The parcel is an easement owned by the applicant that contains approximately 5 acres and is on land that is cropland. The area around the wellhouse is to be fenced which takes the land inside the fenced area including the well house out of production. The current setback requirement from a county road in the A-1 district is 150' from the center of the road. However, the applicant wishes to construct a well house building approximately 138 feet from the center of SW 84th.

- 2 Whether or not the granting of the variance will adversely affect the right of adjacent property owners or residents.***

In this particular instance, I do not feel the granting of the variance would adversely affect the right of adjacent property owners or residents.

- 3 Whether or not the strict application of the provisions of the zoning regulations from which the variance is requested will constitute an unnecessary hardship upon the property owner represented in the application.***

It is difficult to say whether or not the strict application of the zoning regulations would cause an unnecessary hardship for the City of Wichita. However, the strict application of the zoning regulations in this case would mean more agricultural land taken out of production.

- 4 Whether the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.***

The granting of the variance should not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare. There is always concern when a structure is located near an intersection related to site lines and being able to see oncoming traffic. It is my opinion that a 140 feet setback is adequate to maintain visibility at the intersection. This site is at the northwest corner of the intersection of S. Willow Lake Rd. and SW 84th.

- 5 Whether the granting of the variance desired will not be opposed to the general spirit and intent of the zoning regulations.***

I feel the granting of the variance would not be opposed to the general spirit and intent of the zoning regulations because of the unique circumstances associated with the set up of the water treatment building site.

In summary, I would have no objections to a variance being granted for the reasons stated above.

The Chairman asked for comments from the applicant. Mr. Meier said this was a new site that would have a new well house. He said again they were wanting to locate the well house in the corner to keep the lost agricultural land to a minimum.

The Chairman opened the meeting to a public hearing. There were no comments or letters for or against. The Chairman closed the public hearing.

The Chairman asked for any questions or comments from the Board. There being no comments, Mr. Emmel moved to approve the variance based on numbers 2, 4, &5 of the staff report. Mr. Bender seconded. The Chairman called for a vote, the vote was 7 for and 2 opposed, motion carried, variance approved.

6. Public hearing Case No. VAR. 24-24-3W *Request by the City of Wichita, Water Utilities for a variance from the minimum setback from a county road in the A-1 Agricultural zoning district.*

With this particular request you will be sitting as the Board of Zoning Appeals. The authority of the Board of Zoning Appeals is somewhat different from that of the planning commission in that actions taken are the final decision. These matters are not sent on to the Board of County Commissioners. The Board of Zoning Appeals is authorized to issue variances to the regulations in instances in which it is felt the variance would not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the zoning regulations would, in an individual case, result in an unnecessary hardship, provided the spirit of the regulations is observed, public safety and welfare secured, and substantial justice done.

An applicant must show that the property in question was acquired in good faith; and, where by reason of exceptional narrowness, shallowness, or shape of the specific piece of property at the time of the effective date of the district zoning regulations, or where by reason of exceptional topographical conditions or other extraordinary or exceptional circumstances that the strict application of the terms of the zoning regulations actually prevent the use of the property in the manner similar to that of other property in the zoning district where it is located.

In this particular instance, an application has been submitted by the City of Wichita, Water Utilities for a variance from Article 9.07 of Harvey County's Unified Development Code (Zoning and Subdivision regulations). The applicant is requesting a variance from the requirement that any structure must be located at least 150 feet from the center of a county maintained road.

I have reviewed the application in light of the specific criteria to be considered for any variance request. Those criteria and my comments are as follows:

- 1 Whether or not the variance requested arises from such conditions which are unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or applicant.***

This particular parcel is zoned A-1 for agricultural uses. There are no conditions that are unique to the property either geographically or historically. The parcel is an easement owned by the applicant

that contains approximately 5 acres and is on land that is cropland. The area around the wellhouse is to be fenced which takes the land inside the fenced area including the well house out of production. The current setback requirement from a county road in the A-1 district is 150' from the center of the road. However, the applicant wishes to construct a well house building approximately 128 feet from the center of SW 84th.

2 *Whether or not the granting of the variance will adversely affect the right of adjacent property owners or residents.*

In this particular instance, I do not feel the granting of the variance would adversely affect the right of adjacent property owners or residents.

3 *Whether or not the strict application of the provisions of the zoning regulations from which the variance is requested will constitute an unnecessary hardship upon the property owner represented in the application.*

It is difficult to say whether or not the strict application of the zoning regulations would cause an unnecessary hardship for the City of Wichita. However, the strict application of the zoning regulations in this case would mean more agricultural land taken out of production.

4 *Whether the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.*

The granting of the variance should not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare. There is always concern when a structure is located near an intersection related to site lines and being able to see oncoming traffic. It is my opinion that a 140 feet setback is adequate to maintain visibility at the intersection. This site is located approximately ½ mile west of S. River Park Rd. on the north side of SW 84th.

5 *Whether the granting of the variance desired will not be opposed to the general spirit and intent of the zoning regulations.*

I feel the granting of the variance would not be opposed to the general spirit and intent of the zoning regulations because of the unique circumstances associated with the set up of the water treatment building site.

In summary, I would have no objections to a variance being granted for the reasons stated above.

The Chairman asked for comments from the applicant. Mr. Meier said this was a former site of a chlorination station that had been closed down for several years. This site was different from the others he said in that it was not at an intersection and that they needed to maintain a required distance from the west property line and a safe distance from the house to the east.

Mr. Alison asked if they needed to keep a certain distance from the west property line, Mr. Meier said that KDHE required a minimum setback from the old chlorination site to protect the well head.

Mr. Emmel asked how close to the west property line they would be. Mr. Meier said a couple of feet. Mr. Bender asked what an offset well is, Mr. Meier explained it was a well that was drilled outside the well house to be tied in with the plumbing on the inside of the well.

Mr. TenEyck asked about how far the fence needed to be from the well house. Mr. Meier said that KDHE required at least 100 feet in all directions from the well to protect the well head.

The Chairman opened the meeting to a public hearing. There were no comments or letters for or against. The Chairman closed the public hearing.

The Chairman asked for any questions or comments from the Board. There being no comments, Mr. Bender moved to approve the variance based on numbers 2, 4, & 5 of the staff report. Mr. Alison seconded. The Chairman called for a vote, the vote was 7 for and 2 opposed, motion carried, the variance was approved.

7. Public hearing Case No. VAR. 13-24-3W *Request by the City of Wichita, Water Utilities for a variance from the minimum setback from a county road in the A-1 Agricultural zoning district.*

With this particular request you will be sitting as the Board of Zoning Appeals. The authority of the Board of Zoning Appeals is somewhat different from that of the planning commission in that actions taken are the final decision. These matters are not sent on to the Board of County Commissioners. The Board of Zoning Appeals is authorized to issue variances to the regulations in instances in which it is felt the variance would not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the zoning regulations would, in an individual case, result in an unnecessary hardship, provided the spirit of the regulations is observed, public safety and welfare secured, and substantial justice done.

An applicant must show that the property in question was acquired in good faith; and, where by reason of exceptional narrowness, shallowness, or shape of the specific piece of property at the time of the effective date of the district zoning regulations, or where by reason of exceptional topographical conditions or other extraordinary or exceptional circumstances that the strict application of the terms of the zoning regulations actually prevent the use of the property in the manner similar to that of other property in the zoning district where it is located.

In this particular instance, an application has been submitted by the City of Wichita, Water Utilities for a variance from Article 9.07 of Harvey County's Unified Development Code (Zoning and Subdivision regulations). The applicant is requesting a variance from the requirement that any structure must be located at least 150 feet from the center of a county maintained road.

I have reviewed the application in light of the specific criteria to be considered for any variance request. Those criteria and my comments are as follows:

1 *Whether or not the variance requested arises from such conditions which are unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or applicant.*

This particular parcel is zoned A-1 for agricultural uses. There are no conditions that are unique to the property either geographically or historically. The parcel is an easement owned by the applicant that contains approximately 5 acres and is on land that is cropland. The area around the wellhouse is to be fenced which takes the land inside the fenced area including the well house out of production. The current setback requirement from a county road in the A-1 district is 150' from the center of the road. However, the applicant wishes to construct a well house building approximately 112 feet from the center of S. River Park Rd.

2 *Whether or not the granting of the variance will adversely affect the right of adjacent property owners or residents.*

In this particular instance, I do not feel the granting of the variance would adversely affect the right of adjacent property owners or residents.

- 3 ***Whether or not the strict application of the provisions of the zoning regulations from which the variance is requested will constitute an unnecessary hardship upon the property owner represented in the application.***

It is difficult to say whether or not the strict application of the zoning regulations would cause an unnecessary hardship for the City of Wichita. However, the strict application of the zoning regulations in this case would mean more agricultural land taken out of production.

- 4 ***Whether the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.***

The granting of the variance should not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare. There is always concern when a structure is located near an intersection related to site lines and being able to see oncoming traffic. It is my opinion that a 140 feet setback is adequate to maintain visibility at the intersection. This site is located at the northwest corner of the intersection of S. River Park Rd. and SW 72nd.

- 5 ***Whether the granting of the variance desired will not be opposed to the general spirit and intent of the zoning regulations.***

I feel the granting of the variance would not be opposed to the general spirit and intent of the zoning regulations because of the unique circumstances associated with the set up of the water treatment building site.

In summary, I would have no objections to a variance being granted for the reasons stated above.

The Chairman asked for comments from the applicant. Mr. Meier said this was a newly acquired 5 acre site. Mr. Bender asked why so much land. Mr. Meier referred the question to Lynn Moore with PEC engineering. Mr. Moore said that many landowners are not interested in just selling 1 or 2 acres and that selling 5 acres makes it financially acceptable.

Mr. Bender asked if the site had been studied for wildlife, wetlands, conservation easements or historical significance. Mr. Meier said that all sites were reviewed for wetlands and historical significance and none were found.

The Chairman opened the meeting to a public hearing. There were no comments or letters for or against. The Chairman closed the public hearing.

The Chairman asked for any questions or comments from the Board. There being no comments, Mr. Bender moved to approve the variance based on numbers 2, 4, &5 of the staff report. Mr. Emmel seconded. The Chairman called for a vote, the vote was 7 for and 2 opposed, motion carried, the variance was approved.

Old Business:

Staff reported that the letter of final determination for the flood maps had been received. The effective date of the new maps will be October 6th of this year. A public information open house will be held on May 27th from 4-8 pm in the community room of the courthouse. The public hearing will be held in August, staff reported.

New Business:

The Meeting was adjourned by Chairman Kirk at 8:15 pm.