

MINUTES
HARVEY COUNTY REGIONAL PLANNING COMMISSION
HARVEY COUNTY BOARD OF ZONING APPEALS
Harvey County Courthouse
Community Room
July 6th, 2010
7:00 PM

Members Present: Clifford Kirk, Wayne Alison, Bonnie Wendling, Larry Goering, Carroll Harder, Robert TenEyck, Jack Bender, Larry Emmel, William Wilson, Ron Peters, Dorothy Thiessen, & Alan Beam

Members Absent: Harlan Foraker, Al Heine, & Chad Fuqua

Staff Present: Scott Davies, Planning & Zoning Administrator

Others Present: John Caffrey

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

1. Chairman Kirk asked for any corrections to the May 4th, 2010 minutes, there being none, Mr. Bender moved to approve the minutes and Mr. TenEyck seconded, motion carried.
2. Staff Report: Four building permits were issued during May for a total construction estimate of \$456,000 and five permits in June for a total of \$369,500.
3. **Public Hearing, Case No. VAR 6-22-1W** *Request by John Caffrey for a variance from the minimum setback from a township 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 John Caffrey, for a variance from Article 9.07 of Harvey County's Unified Development Code (Setback Regulations). The applicant is requesting a variance from the requirement that all structures be setback at least 80 feet from a township road in the Agricultural zoning district. The applicant is wishing to construct an agricultural storage building 60 feet from the centerline of a township 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 and contains approximately 5 acres. The lot is located in the southeast quarter of Section 6 in Emma Township. This is not unique to the district; all structures in order to be issued a building permit along a township road are required to be setback at least 80 feet from the centerline of the road.

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.***

The size of the property (5 acres) does create some hardship in meeting the 80 foot setback. Mr. Caffrey does have a number of buildings on the property; in addition, by meeting the 80 foot setback, Mr. Caffrey would need to remove a large tree.

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. The property has a row of trees between where the building would be located and the road.

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 is not opposed to the general spirit and intent of the zoning regulations.

In summary, I would have no objection to granting the variance. Enclosed are; a copy of an aerial photo showing the parcel in question, a copy of a map showing the location of the property in relation to the rest of Harvey County, Mr. Caffrey's application, affidavit of publication, and a list of adjacent landowners.

Staff presented aerials and pictures of the property.

Chairman asked for any questions from the Board, Mr. Bender moved to approve the variance. Mr. Peters seconded.

Mr. Harder commented that he did not think the variance should be approved, after attending the conference in Junction City he said that very few variances should be approved.

Mr. Emmel agreed that the variance should not be approved and that after attending the workshop, he would not have approved the variances for the City of Wichita at the last meeting.

Mr. Allison said he believed that the variance should be granted because it is not impacting any neighbors and that if it were near an intersection or an area of growth then he could see the reason for not granting the variance.

The Chairman called for a vote, the vote was 7 for and 3 against with 2 abstentions.

2. REVIEW FLOODPLAIN REGULATIONS

Staff reported that the new flood maps would be on the next month's agenda and that if any changes concerning the regulations should also be made. Staff said that the regulations had been sent to the Division of Water Resources for their review and approval. Mr. Emmel asked why the planning commission had to adopt the new flood maps and what would be the consequences if they were not adopted. Staff said that if the new maps are not adopted as part of the County's floodplain regulations then FEMA would drop Harvey County from the National Flood Insurance Program.

There were no recommendations for proposed changes to the floodplain regulations.

3. REVIEW COMPREHNSIVE PLAN

Staff Report: Kansas State Statue 12-747 (d) states " at least once each year, the planning commission shall review or reconsider the comprehensive plan or any part thereof and may propose amendments, extensions or addition to any plan or part thereof shall be the same as that required for the adoption of the original plan or part thereof." I have attached the current effective comprehensive plan for the county for you to review and make any recommendations for changes or amendments.

If the planning commission elects to make any changes to the plan, then a public hearing would need to be scheduled and the recommended changes would then go to the County Commission for their approval.

Mr. Bender made a recommendation to correct grammatical errors the first full paragraph on page 80 should read "The system still works in rural counties that have marginal growth characteristics and remote, scattered farm patterns."

There were no other changes or amendments made and it is noted that the comprehensive plan was reviewed as required under State Statue 12-747.

Old Business:

Ms. Thiessen gave an update on the Camacho case, she said that it had gone to the Judge who reviewed it and upheld the recommendation of the Planning Commission and decision of the County Commission. She also said that Mr. Camacho's attorney said that they would "see them in Topeka", implying that they were going to appeal the decision.

New Business: There was no new business.

The Meeting was adjourned by Chairman Kirk at 8:10 pm.