

**MINUTES**  
**HARVEY COUNTY REGIONAL PLANNING COMMISSION**  
**HARVEY COUNTY BOARD OF ZONING APPEALS**  
Harvey County Courthouse  
Community Room  
September 7<sup>th</sup>, 2010  
7:00 PM

**Members Present:** Clifford Kirk, Larry Goering, Carroll Harder, Robert TenEyck, William Wilson, Ron Peters, Dorothy Thiessen, & Alan Beam

**Members Absent:** Chad Fuqua, Wayne Alison, Bonnie Wendling, Jack Bender, Larry Emmel, , Harlan Foraker, & Al Heine

**Staff Present:** Scott Davies, Planning & Zoning Administrator

**Others Present:** Keith & Barbara Martin, Maggie Morgan, Kelly Hayes, Vernon Becker, Justin & Suzanne Becker, Corinne & Don Kehrberg

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

1. Chairman Kirk asked for any corrections to the August 10th, 2010 minutes, there being none, Mr. Peters moved and Mr. Harder seconded to approve the minutes, motion carried.
2. **Staff Report:** Ten building permits were issued during August for a total construction estimate of \$869,813.
3. **Justin Becker Split Off: Single family building permit eligibility for a split off of approximately 10 acres from a 40 acre parcel located in the southwest quarter of the northeast quarter of Section 17 of Sedgwick Township**

**DATE:** August 30, 2010

Justin Becker, applicant and Vernon Becker, landowner are requesting a building permit to construct a single family dwelling under the provision mentioned in Article 9.05 of the Harvey County Unified Development Code. That provision stipulates that the minimum lot size in the A-1 zoning district shall be equivalent to a quarter of a quarter section of land; however, smaller lots with a minimum area of five acres shall be permitted provided the following conditions are met:

- a. Newly created lots shall have at least fifty percent (50%) Class IV or lower productivity soils as designated in the soil survey of Harvey County, Soil Conservation Service, November 1974 as amended.
- b. A proposed lot or tract may be designated as low productivity by the Board of Harvey County Commissioners after receiving a recommendation from the HCRPC if at least fifty percent (50%) of the lot or tract to be created can not reasonably be farmed because of steep topography, the separation of the tract from other contiguous agricultural land by significant natural or man made boundaries, such as ravines or highways, or the prevalence of natural features such as waterways or shelter belts.

The site in question is comprised of Class II and III soils; consequently it is not eligible for a building permit on the basis of poor soils (a). The applicant is requesting the building permit be issued based on the second (b); on the contention that the presence of trees, a waterway, and steep topography makes it unable to be farmed.

Attached is an aerial photo showing the site in question and a copy of a map showing the location of the site in relation to the rest of Harvey County?

As you are aware, your task is to make a judgment as to whether you believe the site meets the criteria outlined previously under b. I would remind you that your decision should be made on the basis of whether you feel the site meets or doesn't meet the criteria established above and those criteria only. If you choose to recommend that this tract of land be eligible for a residential building permit, then your recommendation will go to the Board of Harvey County Commissioners for their decision.

Staff presented overhead slides showing aerials and on ground pictures of the property in question.

The Chairman opened it up for comment. Mr. Justin Becker said that he and his wife would like to build a residence on this site; he said it was an attractive site and felt it was ideal for building a home.

Dr. Wilson asked if there had been any flooding in the past. Mr. Vernon Becker, landowner said there had been some flooding in the past but mostly on the far east side of the section but nowhere near where the house would be located.

Mr. Harder moved and Dr. Wilson seconded to recommend approval of the split off. The Chairman called for a vote, the vote was 7 for and 0 opposed, motion carried.

**4. Case No. VAR 17-24-1W, Request from Justin Becker for a variance from the minimum frontage requirement 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 Justin Becker 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 the minimum lot frontage along a township road be 80 feet. In this case, because the property is located in the interior quarter section creating a landlocked situation, is requesting that a legal ingress/egress easement be placed across the property to the north be allowed in lieu of a minimum frontage requirement. If granted, the applicant would be required to have the easement recorded on the deed of the adjacent property before a building permit would be issued.

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:

- a. 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 10 acres. The lot is located in the southwest quarter of Section 17 in Sedgwick Township. This is not unique to the district, all structures located in the A-1 Agricultural zoning district are required to have minimum frontage of 80 feet along a township road. This is not an action created by the owner/applicant.

***b. 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. The applicant's father also owns the property adjacent to the road on which the easement would be place.

***c. 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.***

I believe the strict application does constitute an unnecessary hardship due to the location of the parcel.

***d. 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.

***e. 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.

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

You will find aerials of the property and a map of the county showing the location attached with the request by Mr. Becker for a Split Off.

Mr. Goering had a question about who would maintain the road, staff said it is a private drive and would be the responsibility of the landowners involved.

There was discussion about how wide the easement should be, Mr. Harder said that at one time they were 8 feet wide but with larger equipment that isn't wide enough today. Ms. Thiessen asked about fire trucks getting back there and how much room they would need. Staff said that fire departments like to see turn outs about every 500 feet so one vehicle can pass another.

Mr. Kirk asked if the easement would go on the deed. Staff said that it would need to be a legally recorded easement on all properties between SW 48<sup>th</sup> and the approved parcel that was split. Staff said that part of the condition of approving the variance is that the easement be legally recorded.

At this time Dr. Wilson moved and Mr. Peters seconded to grant a variance to allow an easement in lieu of the minimum frontage requirement. The Chairman called for a vote, the vote was 7 for and 0 opposed, motion carried.

5. **Case No. VAR 5-23-1E.** Request from Keith & Barbara Martin for a variance from the minimum front setback from a township road.

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 Keith and Barbara Martin, 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 applicants are wishing to construct a Residential accessory building 50 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

- a. 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 R-S, Rural Single Family Dwelling and contains approximately 2.5 acres. The lot is located in the northeast quarter of Section 4 in Newton 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.

- b. 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.

- c. 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 (2 acres) does create some hardship in meeting the 80 feet setback. Much of the property is located in a floodplain and a significant area has a designated floodway on it, which is an area the Corp of Engineers wants a no rise to the 100 year flood.

- d. 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.

*e. 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. By granting the variance, it reduces the risk of damage from flooding. In addition, there is a row of hedge trees between the proposed location of the building and the road, minimizing the safety issues with having a building closer to the road than the minimum setback regulations allow.

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, the Martin's application, affidavit of publication, and a list of adjacent landowners.

Mr. Keith Martin explained he wanted to construct a storage building and stay away from the floodplain and in addition, keep some distance from the septic system.

The Chairman opened up for public comment, Ms. Maggie Morgan said she had contacted adjacent landowners and no one had any objections to the variance. Mr. Kelly Hayes, neighbor to the south, said he had no objection to the variance. There was no one to speak against the request.

Mr. Harder moved to approve the variance from the minimum setback in an agricultural zoning district from 80 feet to 50 feet. Mr. TenEyck seconded. The Chairman called for a vote, the vote was 7 for and 0 opposed, motion carried.

**OLD BUSINESS:** Staff reported that the county commission had approved the amendments to the floodplain regulations and the cell tower on the north side of Hesston. Staff also reported that an appeal had been filed at the State concerning the gun range.

The meeting adjourned at 8:05 pm.