

**MINUTES**  
**HARVEY COUNTY REGIONAL PLANNING COMMISSION**  
**HARVEY COUNTY BOARD OF ZONING APPEALS**  
**Harvey County Courthouse**  
**Community Room**  
**March 1<sup>st</sup>, 2011**  
**7:00 PM**

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

**Members Absent:** None

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

**Others Present:** Mr. & Mrs. Stanley Dirks

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

Chairman Kirk asked for any additions or corrections to the December 2010 minutes, there being none, Mr. Harder moved to approve the minutes, Mr. Peters seconded, motion carried.

**1. Public Hearing: VAR 29-24-2W, Request by Stanley W. Dirks to construct an agricultural storage building approximately 65 feet rather than the required 150 feet minimum setback from a county 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 Stanley Dirks, 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 150 feet from a county road in the Agricultural zoning district. The applicant is wishing to construct an agricultural storage building 65 feet from the centerline of a county 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 40 acres. The lot is located in the northwest quarter of Section 29 in Lakin Township. This is not unique to the district; all structures in order to be issued a building permit along a county road are required to be setback at least 150 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.***

I do believe the strict application constitutes an unnecessary hardship due to the fact that Mr. Dirk's property has several existing buildings preventing the ability to meet the setback.

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 road is a county road but not a heavily traveled road. It is also not near a city that could in the future be an arterial 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, since most of Mr. Dirk's property is in cultivation and because of the location of other buildings and other structures, as well, as interior service drives, it limits Mr. Dirk's options for locating the building; therefore I have no objection to granting the variance.

#### **Start of Discussion:**

Mr. Dirks corrected staff's proposed location of the building; he said it would go on the east side of the tree row rather than the west side like staff had shown on the aerial picture.

Mr. Foraker asked Mr. Dirks why he selected a 65 foot setback, Mr. Dirks said that he measured his neighbors addition which was approved a variance and it was 60 feet so he thought 65 feet should be adequate.

Mr. Foraker asked staff about the width of right of way and that he would prefer a setback from the edge of the right of way instead of the centerline of the road. Staff said that usually the property line is the centerline of the road but that he could provide the setback from the edge of the right of way for future cases. Staff was not sure what the right of way width was for this road but thought it was 70 feet.

The Chairman opened it up for a public hearing, having no comment for or against, the public hearing was closed. Staff said there were no written comments submitted to him related to Mr. Dirk's variance.

Mr. Allison asked if the road was gravel, Mr. Dirks said it was. Mr. Dirks said that when he built his house, the Planning & Zoning Director at that time came out and looked at the site because it was close to the intersection. There were already trees blocking the intersection, Mr. Dirks said and the director told him that it was alright to place his house in the 300 ft. triangle site line.

At this time, Mr. Goering moved to approve the variance based on each of staff's criteria, Mr. Emmel seconded. The Chairman called for a vote, the vote was 14 in favor and 1 opposed, motion carried.

## **2. Amendment to Article 9.03: Wind Generators**

Enclosed is a proposed amendment to Article 9.03, Permitted Uses in the A-1, Agricultural zoning district. The amendment would permit by right private use wind generators in the Ag zoning district.

Previously, an applicant wishing to construct a private wind generator was required to obtain a conditional use permit before constructing a wind generator. If approved, the amendment would allow by right, a private use wind generator in the Agricultural zoning district, if it is under 100 feet tall, complies with the setback requirements as described, and erected on a minimum of a five acre tract.

Applicants for a private use wind generator would still need to obtain a building permit and comply with setbacks and floodplain regulations.

Mr. Bender asked about minimum lot size and felt that it should be allowed on smaller acreage than five acres for a private wind generator. Mr. TenEyck pointed out that the current minimum lot size requirement is five acres to build a residence. Staff said that he proposed the five acres so that they would not be built on small lots that might be too close to a neighbor's house. Staff said that a landowner wishing to build a wind generator on a lot less than five acres could apply for a variance.

Mr. Fuqua moved to recommend approval of the amendment, Mr. TenEyck, seconded, there was no further discussion and the Chairman called for a vote. The vote was 13 for and 2 opposed. Motion carried. This item will go to the county commission for their approval.

## **3. Election of Officers**

Mr. Harder moved to nominate Mr. Kirk as chairman and Mr. Goering as vice-chairman, Mr. Heine seconded, the vote was unanimous approval of the nominations.

Having no new or old business, the Chairman adjourned the meeting at 7:45 pm.