

MINUTES
HARVEY COUNTY REGIONAL PLANNING COMMISSION
HARVEY COUNTY BOARD OF ZONING APPEALS
Harvey County Courthouse
Community Room
May 3rd, 2011
7:00 PM

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

Members Absent: Larry Emmel & Alan Beam

Staff Present: Scott Davies, Planning & Zoning Administrator

Others Present: Bret Jacob

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

Mr. Harder requested to add to the agenda to discuss the minimum setback regulations be reviewed.

Chairman Kirk asked for any additions or corrections to the March 1, 2011 minutes, Mr. Goering moved to approve the March minutes with the correction that there was an action motion to have staff check with other zoned counties to see what their minimum setback requirements are and report back to the planning commission, Mr. Bender seconded, motion carried.

1. Public Hearing: VAR 29-24-2W, Tabled from December meeting. 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 Bret Jacob, 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 200 feet from a state highway (K-89) in the Agricultural zoning district. The applicant is wishing to construct a residential accessory building approximately 140 feet from the centerline of a state highway rather than the required 200 feet.

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 1.5 acres. The lot is located in the northeast quarter of Section 26 in Halstead Township. This is not unique to the district; all structures in order to be issued a building permit along a state highway are required to be setback at least 200 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.***

Because the lot is small (just over one acre) and because of the shape of the lot and slope of the lot, it places a hardship on the applicant to meet the minimum 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, because of the small lot, 200 foot setback, and the topography of the lot, I am not opposed to granting the variance.

Start of Discussion: Mr. Jacobs, the applicant made a presentation showing where a power line and a water line interfered with the location if the building was placed to comply with the minimum front setback requirement. Mr. Jacob said he intended to use the building for storage and to work on his equipment. Mr. Harder asked what the size of the building is. Mr. Jacob said it will be a 24 foot by 32 foot building. Mr. Bender said that there was no intersection nearby so safety was not an issue. Mr. Foraker asked about the utility line, Mr. Jacob said the electricity came in from the north property line overhead to the house. The water line came from the well in the northwest corner of the lot.

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At this time Mr. Peters moved to approve the variance based on letters A, B, C, & F of the staff report, Mr. Fuqua seconded, the Chairman asked for any discussion, Mr. Harder said that the highway could become a four lane highway and this might interfere with the road. Dr. Wilson said he did not believe it would block the view from the road. Mr. Jacob said that there were other buildings along the road that were as close as what he was requesting. Mr. Foraker said the 200 foot setback did not make sense to him and felt it was too far and that this should be discussed.

The Chairman called for a vote, the vote was 11 in favor and 2 opposed, motion carried.

2. Discussion of Minimum Setback Regulations. Staff said he would obtain the minimum setback requirements from other counties and provide that information for the next meeting. Mr. Foraker asked why the setbacks are so far back, staff said some of it is because of not blocking line of site for intersections. Staff was asked what are the current setback requirements, staff responded that they are; Township roads, 80 feet from the centerline of the road, County roads, 150 feet from the centerline of the road, and State highways, 200 feet from the centerline. Staff said that the right of way will vary even amongst state highways, some areas along US 50 the right of way is very wide, staff was not sure what those widths are but he will provide those at the next meeting.

There was discussion about what a hardship is Mr. Kirk felt that hardship is difficult to approve, some of the so called hardships that have been said in the past were mostly because the applicant just didn't want to put the building where the county required. Mr. Goering commented that farmers do not want to use good farm ground to place their buildings on.

Mr. Harder commented that 200 feet is too far for a setback from a state highway and 100 feet is too close. He suggested 80 feet for a township road, 120 feet for a county road, and 150 feet for a state highway. Mr. Foraker suggested 80 feet for a township road, 100 feet for a county road and 120 feet for a state highway.

Mr. Kirk said the commission should wait to get information from other counties and then make a recommendation.

At this time, Mr. Goering moved to recommend to the county commission to place a moratorium on variance applications for setbacks from roads and highways, Mr. Alison seconded, motion carried.

3. Public Hearing: CUP 32-23-3W, Request from Terry Stanford for a conditional use permit to operate a R.V. Park and rental storage business in the A-1, Agricultural zoning district.

The applicant or an representative was not present to speak for the request, therefore, Mr. TenEyck moved and Mr. Fuqua seconded to table the request, motion carried.

New Business: Staff reported that there was a request for a special meeting on May 17th for a variance request and wanted to get the planning commission's response for this request. Mr. Harder said he did not want to start having special meetings and moved to deny the request, Mr. TenEyck seconded, motion carried.

The Chairman adjourned the meeting at 8:00 pm.