

MINUTES
HARVEY COUNTY REGIONAL PLANNING COMMISSION
HARVEY COUNTY BOARD OF ZONING APPEALS
Harvey County Courthouse
Community Room
July 5th, 2011
7:00 PM

Members Present: Clifford Kirk, Carroll Harder, Dorothy Thiessen, Wayne Alison, Jack Bender, Larry Goering, Al Heine, & Alan Beam

Members Absent: William Wilson, Chad Fuqua, Robert TenEyck, Ron Peters, Harlan Foraker, Larry Emmel & Bonnie Wendling

Staff Present: Scott Davies, Planning & Zoning Administrator

Others Present: See attached list

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

Chairman Kirk asked for any additions or corrections to the June 7th, 2011 minutes, Mr. Bender had several corrections. #1, on page 6, 4th paragraph up from bottom, second sentence should read "Mr. Bender asked if she" not "is she". #2, on page 10, 2 paragraphs up from bottom, the third sentence should read; "He had seen an old pit but does not now have water." #3, same paragraph as #2, last sentence should read; "there are light poles". #4 page 11, third paragraph up from bottom, second sentence should read; "Mr. Bender said he was not opposed to the request but only wishes to be assured that Mr. Becker complies with the regulations." Mr. Heine moved to approve the minutes with the corrections, Mr. Allison seconded, motion carried.

1. Public Hearing CUP 27-22-1W, request from Bradley Koehn to operate a cabinet and furniture business.

Staff Report:

An application has been submitted by Bradley Koehn on behalf of Becker Cabinet and Furniture, LLC for a conditional use permit to operate a cabinet and furniture making business and retail sales floor on property in the A-1 Agricultural zoning district.

The property in question is located approximately ¼ mile north of NW 48th on the east side of N. Ridge Rd.

I have evaluated the request in light of the criteria to be reviewed when considering a conditional use permit and have the following comments.

All of the criteria require subjective judgments on the part of the Planning Commission.

A. The establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort, or general welfare.

All chemicals used in the process of making cabinets and furniture will be required to be disposed of according to state regulations. Hazardous materials will not be allowed to be discharged into the onsite wastewater treatment pond or onto the surface of the property. This proposed use should not endanger the public health or safety. All operations will go on inside the building so there should be very little noise

B. The uses, values, and enjoyment of other property in the surrounding area or neighborhood for purposes already permitted shall in no foreseeable manner substantially be impaired or diminished by the conditional use.

This is an extremely subjective determination, some adjacent landowners might view this as a detriment to the use and value of their property, others however may see it as not having a negative impact on the use and enjoyment of the property.

C. The establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district, and will not represent an invasion of an inappropriate use.

The proposed use is located in the Agricultural preservation area as designated in the county's comprehensive plan. This area, according to the comprehensive plan, allows either by right or condition agricultural uses in nature and other limited commercial enterprises. Woodworking is permitted with a conditional use permit in the Agricultural zoning district.

D. Adequate utilities, access roads, drainage and other necessary improvements are present on the site or planned to be made.

Access to the site is an existing drive off of N. Ridge Rd, which is a paved county road. There will be some increase in traffic due to the business but Ridge Rd. is paved and able to handle any increased traffic associated with it.

E. Adequate measures have been made or planned to provide ingress and egress designed so as to minimize traffic congestion in the public streets or highways.

Adequate measures are in place to provide ingress and egress out of the property. There will be an increase of traffic due to employees, deliveries, and a low volume of retail customers.

F. The conditional use shall conform to all applicable regulations of the district in which it is located.

The existing building that Mr. Koehn plans to use for his cabinet and furniture business was issued a building permit in 2004 as an agricultural building. The building does not comply with the county's minimum setback requirements from the front setback. Currently, the building is about 90 feet away from the centerline of Ridge Rd. instead of the required minimum setback of 150 feet from the centerline of a county road.

If approved, the conditional use must conform to all applicable regulations of the A-1 zoning district and with any additional conditions that are placed on it by the Planning Commission and Board of County Commissioners.

SUMMARY:

Staff Recommendation: Because of the location of the building, and that it is not in conformance with the county's zoning regulations, it is staff's recommendation that the planning board table the request and have Mr. Koehn apply for a variance from the minimum setback regulation before a motion is made concerning the request for conditional use permit.

Discussion:

There was a question whether the building is being used for a residence, staff did not think so.

Mr. Koehn, applicant and owner talked about the building permit issued and that it was issued knowing that it would be used for commercial purposes. Mr. Koehn talked about his business and how it has expanded, they purchased more equipment and it needed more electrical service so they moved some equipment down to Ridge Rd, it also has a paved road which is helpful for traffic. Mr. Koehn said there would be very little traffic, 1 or 2 semis per week, 1 or 2 customers per week, and 4 to 6 employees. He plans to expand the building to the north. He felt they would have more exposure at this site and help increase traffic.

Mr. Kirk asked about the house, Mr. Koehn said they plan to sell the property and buildings at the current site and build a house at this site, but there is no house at the Ridge site.

Mr. Harder asked to see a slide of the north side of the building. Mr. Harder asked how far Mr. Koehn planned to expand the building to the north, Mr. Koehn said about 15 feet north the entire length of the building. Mr. Harder said he thought he was wanting to expand to the west, Mr. Koehn said he had discussed that with staff and was told he would not be able to expand further west without a variance.

Mr. Koehn said the showroom would be at the west end of the existing building or maybe build a new building for the showroom to the south. Mr. Bender asked about the use of the building when the permit was issued. Mr. Koehn said that the previous zoning administrator told him that as long as he had a tractor parked in it, it would be agriculture. Mr. Koehn said that the building is currently used about once a week to operate a special computerized piece of equipment, the rest of the business operates on property near 96th and N. Meridian.

The Chairman opened up the public hearing. No one spoke in favor. The Chairman acknowledged there were three letters in opposition of the request and read their names; he read the letter from Mr. Robert Weaver since it did not get into the packet.

Mr. Koehn responded to concerns about water pollution from chemicals, he said they would dispose of chemicals properly. He said it is not a retail operation; the show room is there for customers to see what they make. Only a few customers each week would be there. Except for a few nice days in the spring, the doors would be closed reducing any noise from the business.

First to speak against the request was Annette Lamb, she said that the intent of the business from the start was commercial but was issued for agricultural, she did not think that should be rewarded. She was concerned about pollution, noise, and traffic.

Next to speak against the proposal was Terry and Donna Williams; he expressed concerns about water pollution and trash blowing. He said they purchased their home to live in a rural environment and believes this type of use diminishes the enjoyment of their property. Donna Williams also said that she felt there would be increased business and traffic if the request is approved. She also said that she felt it was deceptive to apply for an agricultural building and then use it for commercial purposes.

The Chairman closed the public hearing.

Mr. Harder asked staff about a commercial use in this area. Staff said that the location is in the agricultural preservation area of the comprehensive plan but does allow specified non agricultural uses with a special permit. Mr. Harder also expressed concern about burning lumber; he said that was not allowed.

Mr. Fuqua moved to table the request, Mr. Heine seconded. There was discussion about not tabling and instead denying the request. There was concern about a variance being approved for the building and that the commission would be right back where it is now.

The Chairman called for a vote, the vote was 4 in favor and 4 against. Motion failed.

Mr. Bender moved to deny the request, based on letter B of staff report that the enjoyment of adjacent landowners would be diminished. Mr. Goering seconded. The vote was 6 in favor and 2 opposed. Motion carried.

2. Public Hearing: Split Off in Section 33 of Garden Township.

Staff Report:

Ira M. Frey is requesting a split off of less than a quarter of a quarter section (40 acres) to be eligible for 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:

1. 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.
2. 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 reasonable 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 final approval.

Discussion: Mr. Frey, the applicant explained that he has just purchased about 137 acres in the northwest quarter of Section 33 of Garden Township; however there is about 25 acres of pasture that he does not have a use for and would like to have it eligible for a residence. He said he would like to sell the property, if it is approved.

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The Chairman opened up for public comment, there was one comment from an adjacent landowner, Duane Hefling, who was in favor of the request. He favored it because he said if a house was built in the area, he would prefer to see it built back on the pasture area further from his house and not on the cultivated ground which is next to his house.

There was discussion about an ingress/egress easement across the cultivated ground. Mr. Frey commented that he would prefer to keep all the crop land and just have an easement across it to the pasture ground.

Mr. Harder moved to approve the request for a split off of less than 40 acres based on B, unfarmable ground, Mr. Alison seconded. The vote was 8 in favor and 0 opposed, motion carried.

The meeting adjourned at 9:50 pm.