

**MINUTES OF THE  
MINNEHAHA COUNTY ZONING BOARD OF ADJUSTMENT**

February 22, 2016

A meeting of the Zoning Board of Adjustment was held on February 22, at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

COUNTY ZONING BOARD OF ADJUSTMENT MEMBERS PRESENT: Bill Even, Doug Ode, Bonnie Duffy, Becky Randall, Paul Kostboth, and Jeff Barth.

STAFF PRESENT:

Scott Anderson, Kevin Hoekman, and David Heinold - County Planning

The meeting was chaired by Bonnie Duffy.

**ZONING BOARD OF ADJUSTMENT**

**ITEM 1. Approval of Minutes – November 23, 2015**

A motion was made by Commissioner Even and seconded by Commissioner Randall to **approve** the November 23, 2015 minutes. The motion passed unanimously.

**ITEM 2. VARIANCE #16-01 to reduce the rear yard setback from 30 feet to 22 feet on the property legally described as Lot 1, 2, & N1/2 of Lot 3, Tract 3, Voigt's Subdivision, Tracts 2 and 3, SW1/4, Section 21-T101N-R51W.**

Petitioner: Lavern Haas

Property Owner: same

Location: 46256 West Shore Place Approximately 5 miles south of Hartford

Staff Report: David Heinold

This would reduce the rear yard setback from 30 feet to 22 feet.

**General Information:**

Legal Description – Lot 1, Lot 2, and the N1/2 of Lot 3, Voigts Subdivision, Tracts 2 and 3, SW1/4, Section 21-T101N-R51W

Present Zoning – RR Rural Residential District

Existing Land Use – Residential

Parcel Size –

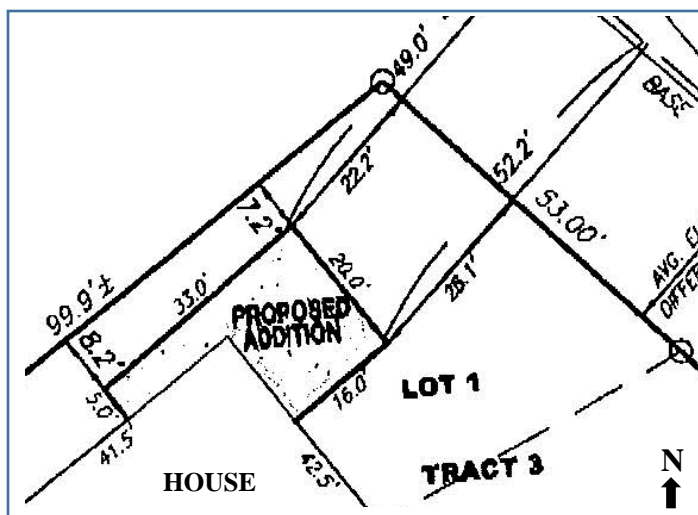
**Staff Report:** David Heinold

**Staff Analysis:**

The petitioner is requesting a variance from the rear yard setback requirement to allow a proposed addition to the north corner of the existing house. The closest points to the property boundary are depicted on the image labeled Exhibit A, at right, showing the reason for the reduction in the rear yard setback from 30 feet to 22 feet.

The proposed addition will not be located any closer to the rear yard property line than what the house is presently setback

from the front property line.



**Exhibit A – Proposed Addition**



On January 27, 2016, staff inspected the property and took pictures of the site. The picture, at left, was taken from West Shore Place just north of the subject property to provide a visual image of variance request and proposed addition staked out in the snow. Staff calculated that the tree pictured, at left, is about 27 feet from the closest point of the proposed addition. The tree is situated at least 10 feet from the landscaping edge and about even with the back of the neighboring properties to the north of the subject

property.

*The Zoning Board of Adjustment shall not vary the regulations unless it shall make findings based upon the evidence presented to it in each specific case that all of the following conditions are present:*

**(A). That specific circumstances or conditions, such as exceptional narrowness, topography, or siting exists.**

The site of the requested variance is located on a portion of the west shore of Wall Lake and is subject to certain edging of the landscape. This area also lies partially within the 100-year floodplain, but the proposed addition indicated on Exhibit A is shown to be about 49 feet from the Base Flood Elevation at the closest point.

**(B). That the variance does not grant a use which is otherwise excluded from that particular district, or diminish or impair property values within the area.**

The reduced rear yard setback will not permit a use not permitted in the zoning district or likely cause a significant change in property values in the area. The proposed addition for the requested variance will not be located any closer than the neighboring house additions lakeside and would have a larger setback area from the grass landscape edge adjacent to the base flood elevation line.

**(C). That due to the specific circumstance or existing conditions strict application of the Zoning Ordinance would be an unwarranted hardship.**

Given the current lot sizes and layouts around Wall Lake, strict adherence to the setback requirements would be a hardship. Allowing the reduced setback will allow modifications to occur which will make this unique parcel more useful.

**(D). That the granting of a variance is not contrary to the public interest and is in harmony with the general purposes and intent of the Zoning Ordinance.**

The requested setback distance from the rear yard property line for the proposed addition does not present a case in which the granting of a variance would otherwise be contrary to the public interest. The variance will allow the property owner to utilize a unique lot arrangement formed by the natural lay of the land. Furthermore, staff finds that a reduced setback would be in harmony with the general purpose and intent of the Zoning Ordinance.

**(E). That because of circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulations and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.**

Many of the existing dwellings, including the two adjacent lots to the north of the subject property, already encroach on the setbacks within the developments around Wall Lake, which presents justification to the continued allowance of decreased setbacks due to precedence.

**Recommendation:**

Staff recommends **approval** of Variance #16-01 to reduce the rear yard setback from 30 feet to 22 feet.

**PUBLIC TESTIMONY**

David Heinold, Planner I, presented a brief summary of the analysis on the requested variance and commented that the planning department has not received any concerns regarding Variance #16-01 from the South Dakota Game, Fish, & Parks agency.

Lavern Haas, 615 34th Ave. SW, Minot, ND, explained the purpose of the requested variance for the proposed bedroom addition on the north side of the existing lakeside home.

Commissioner Duffy called for additional public testimony and no one answered. The floor was closed to further public testimony.

**DISCUSSION**

Commissioner Barth asked the petitioner if there was public access to lake and the Mr. Haas responded that there was no public access anywhere along his property.

**ACTION**

Commissioner Even made a motion to **approve** Variance #16-01 and the motion was seconded by Commissioner Ode. The motion passed unanimously.

**Variance #16-01 – Approved**

**ITEM 3. VARIANCE #16-02 to reduce the minimum lot size from 1 acre to 0.62 acres on the property legally described as NW1/4 NW1/4 (Ex. N532.2' E932.74'), Section 10-T102N-R50W.**

Petitioner: Lewis & Clark Regional Water System

Property Owner: Bernice M. Nelson

Location: SE Corner of 257th St./469th Ave. Approximately 1 mile west of Crooks

Staff Report: Scott Anderson

This would reduce the minimum lot size from 1 acre to 0.62 acres.

**General Information:**

Legal Description – NW ¼ NW ¼ NW ¼ of Section 10, T102N, R50W. (Proposed to be legally described as Crooks Pump Station Addition)

Present Zoning – A-1 Agriculture

Existing Land Use – Agriculture

Parcel Size – approximately .62 acres

**Staff Report:** Scott Anderson

**Staff Analysis:** The applicant is requesting approval to allow the creation of a lot that is less than one (1) acre in size. The proposed lot size measures 120 feet by 225 feet and would be approximately .62 acres in size. The applicant is planning on constructing a metering building on the site.

**1. That specific circumstances or conditions, such as exceptional narrowness, topography, or siting exists.**

Not all situations or events can be covered by a zoning ordinance and thus a mechanism is put into place in which the public can seek a variation to the regulations. In this situation, there is a compelling set of circumstances and conditions which are somewhat unique and support the granting of a variance. The proposed use does not require an acre to function. Furthermore, the applicant is attempting to limit the amount of land taken out of agricultural production.

The one (1) acre minimum lot size may reflect the state's minimum lot size for a well and septic to be located on a residential lot. In this case, however, the lot being created will not be used for residential purposes. Furthermore, it will not be the site of any permanent work force requiring an office. Therefore, a smaller lot would benefit the applicant and surrounding land owners by reducing the footprint of the lot.

**2. That the Variance does not grant a use which is otherwise excluded from that particular district, or diminish or impair property values within the area.**

Metering facilities are allowed in the A-1 Agriculture District with a conditional use permit, for which the applicant has applied. The proposed use should not harm the property values in the area.

**3. That due to the specific circumstance or existing conditions strict application of the Zoning Ordinance would be an unwarranted hardship.**

Strict application would be a hardship on the property owner selling the land and would be unwarranted in the needs of the applicant. A smaller lot size is in the public's best interest.

**4. That the granting of a Variance is not contrary to the public interest and is in harmony with the general purposes and intent of the Zoning Ordinance.**

The proposed use is a public use and will be part of a water system that will supply water to hundreds of thousands of people in the region. The overall need is evident. The use is typical of any community.

**5. That because of circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulations and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.**

There is a public need for this infrastructure. The request is a reasonable use of the property and allows for the best development of the site.

**Recommendation:** Staff recommends **approval** of Variance #16-02 to reduce the minimum lot size in the A-1 Agriculture District from one (1) acre to approximately .62 acre in size.

**PUBLIC TESTIMONY**

Scott Anderson, Planning Director, presented a brief overview of the staff analysis on the requested variance.

Dan Zulkosky, Lewis & Clark Regional Water System Construction and Contracts Administrator, explained the plans for the site of a future pump station for the Lewis & Clark Regional Water System.

Commissioner Duffy called for additional public testimony and no one answered. The floor was closed to further public testimony.

**DISCUSSION**

There was no planning commission discussion.

**ACTION**

Commissioner Barth made a motion to **approve** Variance #16-02 and the motion was seconded by Commissioner Randall. The motion passed unanimously.

**Variance #16-02 – Approved**

**Adjourn**

A motion was made to **adjourn** by Commissioner Even and seconded by Commissioner Barth.  
The motion passed unanimously.