



**MINNEHAHA COUNTY & DELL RAPIDS
BOARD OF ADJUSTMENT
MEETING MINUTES**

March 22, 2021

**MINUTES OF THE JOINT MEETING
MINNEHAHA COUNTY & DELL RAPIDS BOARD OF ADJUSTMENTS
MARCH 22, 2021**

A joint meeting of the County and City Planning Commissions was held on March 22, 2021 at 7:00 p.m. in the Commission Room of the Minnehaha County Administration Building.

COUNTY PLANNING COMMISSION MEMBERS PRESENT: Bonnie Duffy, Becky Randall, Adam Mohrhauser, Doug Ode, Mike Ralston, and Jeff Barth.

CITY PLANNING COMMISSION MEMBERS PRESENT: Steve Hoff, Virgil Klein, Tom Ludens, and Tom Schwebach (all via Zoom).

STAFF PRESENT:

Scott Anderson, Kevin Hoekman, and David Heinold - County Planning
Eric Bogue – Office of the State’s Attorney
Justin Weiland (via Zoom) – City Administrator

The County Planning Commission Chair Bonnie Duffy presided over the meeting. The City Planning Commission was chaired by Commissioner Schwebach. Planning Commission Chair Bonnie Duffy called the joint Minnehaha County and City of Dell Rapids Board of Adjustments meeting to order at 7:00 p.m.

PUBLIC COMMENT.

Chair Commissioner Duffy opened the floor for public comment and nobody moved to speak.



**MINNEHAHA COUNTY & DELL RAPIDS
BOARD OF ADJUSTMENT
MEETING MINUTES**

March 22, 2021

ITEM 1. VARIANCE #21-01 to Reduce the required front yard setback from 50 feet to 23 feet for a new structure on the property legally described as N ½ N ½ NE ¼ (except H-1 and H-3) in Section 131-T104N-R50W.

Petitioner: Todd Brown

Property Owner: Same

Location: 47139 246th Street. Located approximately 2.5 miles west of Dell Rapids

Staff Report: Scott Anderson

General Information:

Legal Description – N ½ N ½ NE ¼ (except H-1 and H-3) in Section 131-T104N-R50W

Present Zoning – A1 Agriculture

Existing Land Use – Farmstead

Parcel Size – 7.22 acres

Staff Report: Scott Anderson

Staff Analysis: The applicant is requesting a variance to reduce the front yard setback from 50 feet to 23 feet in order to allow for the construction of an 80 foot by 140-foot accessory structure. The frontage of this property is along County Highway 104 or 246th Street. Interstate 29 also runs along the east boundary of the subject property.

There are already two existing buildings located within the fifty-foot front yard setback. The most recent building was permitted in 2005 for a 60' by 120' structure. The Planning Director recently reviewed this permit and determined that it was issued in error by former County Planner Pat Herman. She did not correctly interpret Article 13.03 – ADJUSTMENT TO FRONT YARD REQUIREMENTS. The other structure was built before building permits were required and likely pre-dates the Zoning Ordinance.

The applicant is proposing to construct the requested building further back than the existing buildings at 23 feet south of the front property line. He has indicated that for safety and security reasons, the proposed building needs to be closer to the other building and his residence. He has indicated in his narrative, which is included for your review, that he has no other locations on this property to construct the proposed building.

The County Highway Department has reviewed the proposed request. Shannon Schultz, Assistant Highway Superintendent, does not support the request. He indicated that when County Highway 104 is reconstructed the right-of-way will be increased from the existing 80' to 100'. This means that an additional 10 feet of right-of-way on each side of the highway will be acquired. An increased right-of-way would impact any proposed structures located within a reduced setback. This proposed building would only be 13 feet from the property line. Furthermore, the Assistant Highway Superintendent indicated that flying snow and ice could



**MINNEHAHA COUNTY & DELL RAPIDS
BOARD OF ADJUSTMENT
MEETING MINUTES**

March 22, 2021

potentially strike the building when the highway is plowed. His full comments are included for your review.

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) The particular physical surroundings, shape or topographical conditions of the specific property involved would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.

The property is relatively flat. There are no topographical conditions that pose a hardship.

(b) The conditions upon which the application for a variance is based would not be applicable generally to other property within the same zoning classification or other property substantially similar in use.

The requirement for a fifty (50) foot setback off of a county highway is found throughout the county and not particular to just this parcel.

(c) The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the area in which the property is located.

Granting this variance could very well result in direct harm to the public. Placing a building close to a well-traveled County Highway increases the likelihood that a vehicle could leave the driving surface and crash into the proposed building. Furthermore, placing the building in the proposed setback off of a highway impacts the future usefulness of the road. Potential issues could arise when the County Highway is reconstructed. The issues are compounded on this site, as it located at the intersection of a County Highway and Interstate 29. Any right turning improvement onto the Interstate could be impacted by the placement of more buildings in the minimum setback.

(d) The proposed variance will not unreasonably impair: an adequate supply of light and air to adjacent property; increase the congestion in the public streets; increase the danger of fire; endanger the public safety; or diminish or impair property values within the area.

The proposed variance will not affect the light or air of adjacent properties. The addition of another accessory structure will not increase traffic on the County Highway. The reduction of setback will not increase the danger of fire or the public safety of the neighborhood. The reduction in setback will also not likely diminish property values of properties in the general vicinity.

(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.

The subject property is over 7 acres in size. In addition, the applicant owns the property to the



**MINNEHAHA COUNTY & DELL RAPIDS
BOARD OF ADJUSTMENT
MEETING MINUTES**

March 22, 2021

south and west, where an accessory ag building could be constructed and still be just as close to the farmstead. The applicant has reasonable use of the property.

(f) That the variance, if authorized, will represent the minimum variance that will afford reasonable relief and will represent the least modification desirable of the zoning regulations.

The applicant has attempted to reduce the impact by moving the building as far south as he feels can be accommodated. Should the variance be granted, the Zoning Board of Adjustment may wish to require the applicant sign a waiver of a right to protest any future right-of-way acquisitions or highway reconstruction binding him and any future owners of the property. The waiver would then be recorded on the title at the Register of Deeds.

In reviewing this aspect of the criteria set forth in the Zoning Ordinance, the applicant cannot make a case. The property owner has full reasonable use of the property. Staff finds that the applicant could locate the proposed structure elsewhere on the property, which is over 7 acres in size and still meet all the minimum required setbacks. Therefore, the variance does not meet the provisions in Article 21.00 of the Revised Joint Zoning Ordinance for Minnehaha County and the City of Dell Rapids.

Recommendation: Staff recommends **Denial** of Variance #21-01 to reduce the front yard setback from fifty (50) feet to twenty-three (23) feet.

Public Testimony

Commissioner Randall Recused herself from the hearing.

Scott Anderson, County Planning Department, presented a brief overview of the staff report and recommendation for Variance #21-01. During the presentation Scott Anderson corrected a typo regarding the size of the proposed building. The actual proposed building dimensions are 80 feet by 140 feet.

City Commissioner Virgil Klein asked if the highway was reconstructed what would happen to the buildings at that time. Scott Anderson replied that the County Highway Department will have to negotiate with the property owner to come to an agreement of some sort.

Todd Brown, 47139 246th Street, introduced himself and his family. He explained that the farm has been at this location for many years within the family, and he has been along the highway his whole life. Todd Brown showed a couple photo site plans to illustrate how the building will be used on site and why the building is needed at that location. He explained that making the building smaller would remove the function of the structure. Placing the structure to the west is problematic for slope and water conveyance, and placing the structure to the south is in the way of how cattle get into and out of the pen. Todd Brown then addressed some of the staff report criteria. He mentioned that the DOT widened the road 2 years ago with the buildings staying where they are. He noted that snow plows do not fling snow very far as the trucks are moving



**MINNEHAHA COUNTY & DELL RAPIDS
BOARD OF ADJUSTMENT
MEETING MINUTES**

March 22, 2021

slow. He stated that the hardship is that the building must be located within the farm or it is not usable as a primary building.

Commissioner Mohrhauser asked what distance will the shop be to the cattle yard and where a propane tank will be placed. Todd Brown responded that the shed will be 30 feet from the cattle yard and the propane tank will be on the west side.

Commissioner Barth noted that it will cost a lot of money to widen the road and move buildings to do so. Allowing the building may cause a future expense on a future County Commission. Commissioner Barth asked how much would the petitioner need to move buildings elsewhere. Todd Brown responded that the cement for the proposed structure is be at \$100,000 and that moving the building further south would compromise the access doors to the building.

Shannon Shultz, County Highway Department, was present for comments. He stated that a road ditch is built for snow storage and water conveyance. He noted that it will be expensive to move buildings and shifting the road north at the intersection would cause many other problems.

Todd Brown spoke again and noted that moving the building to meet the 50 feet setback will move all buildings and the house. He stated that he does not want to get closer to the highway and the proposed building will not have as much impact as the existing buildings. The buildings and the road can work together where they are.

The floor was closed to further public comment as nobody else was present to speak to the item.

Discussion:

Commissioner Ralston commented that he understands the usability issue, but is concerned with the precedence of granting a variance. He made a motion to deny the variance.

Commissioner Ode seconded the motion and added that his farm had structures removed with a county highway reconstruction project last summer.

Commissioner Schwebach commented that he believes a precedent already has been set with the other buildings being there and the farm being on the site since before the Interstate Highway was built.



**MINNEHAHA COUNTY & DELL RAPIDS
BOARD OF ADJUSTMENT
MEETING MINUTES**

March 22, 2021

Action:

A motion was made for the County by Commissioner Ralston and seconded by Commissioner Barth to **deny** Variance #21-01. A roll call vote was taken and the motion passed unanimously with 5 votes in favor of the motion and Commissioner Randall recused from voting. A motion was made for the City to **approve** Variance #21-01 by Commissioner Schwebach, and the motion was seconded by Commissioner Klein. A roll call vote was taken and the motion failed with Commissioners Schwebach and Klein voting in favor of the motion, and Commissioners Hoff and Ludens voting against the motion.

Variance #21-01 - Denied



**MINNEHAHA COUNTY & DELL RAPIDS
BOARD OF ADJUSTMENT
MEETING MINUTES**

March 22, 2021

Old Business

None.

New Business

None.

Adjourn

A motion was made for the County by Commissioner Barth and seconded by Commissioner Mohrhauser to **adjourn**. The motion passed unanimously. A motion was made for the City by Commissioner Hoff and seconded by Commissioner Ludens to **adjourn**. The motion passed unanimously. The meeting was **adjourned** at 7:47 pm.