

MINUTES

RILEY COUNTY PLANNING BOARD/ BOARD OF ZONING APPEALS

**Monday, April 8, 2019
7:30 pm**

**Courthouse Plaza East
Commission Meeting Room
115 North 4th Street**

Members Present: Dr. Tom Taul, Chair
Diane Hoobler, Vice-Chair
John Wienck
Nathan Larson
Joe Gelroth

Members Absent: None

Staff Present: Monty Wedel – Director, Bob Isaac – Planner

Others Present: Peter Berezuk and Dave Sands

OPEN PUBLIC COMMENTS

None

CONSENT AGENDA

The minutes of the March 11, 2019 meeting were presented and approved. The Report of Fees for the month of March (\$2,357.00) were presented and approved.

Diane Hoobler moved to approve the consent agenda as presented. John Wienck seconded. Carried 5-0.

Diane Hoobler moved to adjourn the joint meeting of the Riley County Planning Board/Board of Zoning Appeals and reconvene as the Board of Zoning Appeals. John Wienck seconded. Carried 5-0.

BOARD OF ZONING APPEALS

Berezuk – Conditional Use

Chairman Taul opened the public hearing at the request of Peter and Kimberlee Berezuk, petitioners and owners, for a Conditional Use Authorization to permit a secondary dwelling unit on a tract of land in Jackson Township, Section 29, Township 7 South, Range 6 East, in Riley County, Kansas.

Bob Isaac presented the request. Mr. Isaac described the history, location and physical characteristics of the subject property. He stated the property owners wish to place a modular home on the unplatted tract as a secondary dwelling for an existing single family residence. He said the purpose was to provide suitable and secure housing for an elderly family member that is also nearby.

Mr. Isaac went over the list of conditions:

1. There shall be no more than one secondary dwelling on the parcel.
2. An accessory apartment shall not be permitted in either the secondary or principal single-family dwelling.
3. The size of the secondary dwelling shall be limited to 40 percent of the total square footage of the principal single-family dwelling, or 1,000 square feet, whichever is less.
4. The owner of the lot or parcel shall occupy either the principal single-family dwelling or the secondary dwelling.
5. At least one off-street parking space shall be provided for each bedroom within the secondary dwelling.
6. The secondary dwelling shall have roof pitch, windows, eaves and other architectural features that are the same or visually compatible with those of the principal building. Exterior finish materials and trim must be the same or closely match the appearance of the finish materials and trim of the principal building.
7. The secondary dwelling shall be located within 100 feet of the principal residence (as measured from the closest exterior walls).
8. The property shall be in compliance with the Riley County Sanitary Code.
9. The secondary dwelling shall not be conveyed or sold separately from the lot or parcel and shall remain under the same ownership as the principal single-family residence.
10. The address of each dwelling shall be clearly posted on the principal residence and the secondary dwelling, respectively.

Mr. Isaac reviewed the site photos and the site plan stating there will be plenty of parking.

Staff recommended that the requested Conditional Use be approved based on the conditions listed in the staff report.

John Wienck asked what the difference was between a modular home and a manufactured home.

Bob Isaac stated manufactured homes are built to HUD standards and modular homes are built to an International Building Code.

Diane Hoobler asked if they would know them by another name, like mobile home.

Mr. Isaac replied no. He said a mobile home has a title based on the year it was constructed; anything prior to 1976 is considered a mobile home. He said a single-wide manufactured home built after 1976 is considered a manufactured home. He said a manufactured home, usually a double-wide, with a pitched roof and similar siding materials used on a house are manufactured homes of residential design.

Chairman Taul said he always thought a modular home was set on a foundation.

Mr. Wedel replied the only difference is the manufactured homes are built to the manufactured housing code (HUD) and everything else is built to an International Building Code.

Diane Hoobler asked about the type of sewer system, as she was not familiar with it.

Chairman Taul replied a raised bed, alternative system.

Monty Wedel replied it will have a septic tank for pre-treatment and a raised bed will have to be created for the prefabricated, passive system.

Chairman Taul said he understands the request is for a family member but if the property were ever to sell, could the secondary dwelling be rented out.

Mr. Wedel said staff would not restrict and monitor who lives in the secondary dwelling.

Chairman Taul stated he is not a big supporter of these types of requests because things change. He said a neighbor could decide they want to lessen their expenses and do the same thing. He said what started out as a “good Samaritan” good deed situation sometimes backfires.

Monty Wedel replied that is one of the reasons for the secondary dwelling being located within 100 feet of the principal residence. He said this proximity requirement keeps the secondary dwelling from being placed remotely and can always be monitored because it is right next to the main house.

Joe Gelroth said the secondary building shall have roof pitch, windows, eaves and other architectural features that are the same or visually compatible with those of the principal residence. He stated he lives in a stone house and to put up other house that looks like his would be really challenging.

Bob Isaac replied the requirement is that it must be visually compatible or similar, it doesn't have to be exactly the same.

Mr. Gelroth asked how close does it have to match the principal residence, especially a modular home.

Mr. Isaac replied it doesn't have to look identical and staff would work with them ahead of time regarding if the standards will be met.

Monty Wedel said residential design manufactured house is required by statute to be allowed any place where single family residential is allowed. He explained a manufactured home or modular home has to have a pitched roof and siding that looks similar to a house. He said it can't have a metal, flat roof and metal siding that looks like a mobile home.

Chairman Taul asked if the Applicant wanted to speak.

Peter Berezuk said there is a single level addition on the stone house with a relatively low pitched roof. He said they picked a particular design of a home that fits the footprint size of what they were restricted to. He said the one that they have chosen will complement the existing home and shouldn't be an issue. The property also has a modern, metal sided, two-stall work shop/garage, a pole barn that has been wrapped in steel and two barns that date somewhere between the 19th and 20th century. Mr. Berezuk stated there are a lot of different little things that all sort of fit together over 130 years. He said they did struggle with what was compatible. He said the secondary dwelling will be located behind a set of trees and along the side the metal pole barn. He said things will look and be useful for many years.

Mr. Berezuk said he and his wife are new comers to the area. He said his wife works at Fort Riley as a Nurse Practitioner and he is an engineer who works from home for the Marine Corp. Mr. Berezuk stated this is home now and how we help our family enjoy their retirement. He said his wife's parents will be living in the main dwelling with them. He explained the secondary dwelling is for their Uncle David, so he can live more independently but be close enough to help each other.

Monty Wedel followed up to Chairman Taul's question and asked the Applicant when the uncle is no longer occupying the secondary dwelling, what do you envision.

Mr. Berezuk said we have many, many years before that would occur and having extra room for family to visit. He stated his family is in California, part of his wife's family is in Colorado and they have friends all over the country. He stated he was in the service for a many years. He said he would envision it as a guest house but wouldn't want to bring on boarders.

There were no proponents or opponents.

Joe Gelroth moved to close the public hearing. John Wienck seconded. Carried 5-0.

John Wienck moved to approve the request for a Conditional Use Authorization to permit a secondary dwelling unit with the conditions and reasons stated in the staff report.

Diane Hoobler seconded. Carried 5-0.

John Wienck moved to adjourn the Board of Zoning Appeals meeting and reconvene as the Riley County Planning Board. Joe Gelroth seconded. Carried 5-0.

RILEY COUNTY PLANNING BOARD

Annual Review of the Comprehensive Plan

Mr. Isaac stated if the Board had completed its review and was satisfied with how the Plan is working, Chairman Taul could, on behalf of the Riley County Planning Board, sign the prepared memo to the Board of County Commissioners, notifying them that the Planning Board has completed their statutory obligated annual review the Comprehensive Plan. Mr. Isaac stated staff did not have any recommended changes to the Plan.

Diane Hoobler moved that the Riley County Planning Board has conducted the annual review of the Comprehensive Plan and for Chairman Taul to sign the memo and forward it to the Board of County Commissioners. Joe Gelroth seconded. Carried 5-0.

Discussion – side yard building setback requirement not large enough

Diane Hoobler said it bothers her every time she drives by 4001 Zeandale Road because she believes the outbuilding is too close to the house on the adjacent lot. She said she would like to know what the other Board members' opinions are. Photos taken by Mrs. Hoobler were displayed for everyone to review. She said the current driveway being used for both properties is the driveway that served a house that has been demolished. She said in the photo, where the stakes are sticking up, is where the house was located.

Mrs. Hoobler explained that two brothers inherited the land; each received 10 acres. She explained that one brother lives on the other side of the driveway in the house. She said the other brother demolished the existing house on his lot and was going to build a new house, but never did. She said he sold the property instead and the new owner wanted to build a metal building. She said the problem she has is the setback is only 10 feet from the middle of the driveway. She said the metal building is too close to the house on the other side of the driveway.

Nathan Larson asked who owns the driveway.

Monty Wedel stated the property line appears to go right down the middle of the driveway, so it is a split driveway.

Nathan Larson said if there was ever a dispute and a fence is built on the property line, it would give very limited access to turn equipment in and out of the driveway.

In the second photo, which was blurry, Mrs. Hoobler stated the property owner of the metal building has installed an outdoor light on the west side of the building. She said the light from the metal building shines over the neighbor's house, albeit, the garage end of the house.

Mrs. Hoobler said the light is on the west side of the building which doesn't have a door.

John Wienck stated he has driven by the property and said the property was gaud-awful looking.

Nathan Larson asked what the purpose was of having a light where there isn't an entrance.

Monty Wedel replied possibly for security.

Diane Hoobler stated the next photo was taken traveling west. She said she believes the property owner is involved in landscaping and there is organized junk everywhere. She also stated there are five vehicles that are wrapped in white plastic and another seven or eight vehicles on the property.

Bob Isaac replied that the metal building is actually a "shouse". He explained that the buildable area of the lot is constricted due to the 80-foot road setback requirement from Zeandale Road and the floodplain. He said the property owner decided to build a shouse which combines the shop and house into one large building.

Mrs. Hoobler said she doesn't believe anyone is living there and has even a bigger problem if the building is a shouse.

Mr. Isaac stated the building permit was issued for a shouse.

Monty Wedel asked if a Certificate of Occupancy had been issued. Mr. Isaac replied he didn't know.

Diane Hoobler said it really bothers her how close the metal building is to the house on the neighboring property. She said this is in the country; not the city.

Bob Isaac asked Mrs. Hoobler if she had received any complaints from the neighboring property owner.

She replied no.

Monty Wedel asked if staff had investigated the inoperable vehicles.

Bob Isaac replied he didn't know.

Diane Hoobler said total illumination is against the zoning regulations. She read from the zoning regulations, Section 15 Signs and Exterior Lights, page 8, 7.b. Exterior Lighting: "No use permitted under these regulations shall erect or cause to be erected any exterior lighting device or devices that are situated in such a manner that the lighting emitting equipment is visible from any public right-of-way or adjacent residential properties so as to create a hazard or a nuisance."

Mrs. Hoobler said it appears the people in the house have created a boundary with a pickup sitting east and west; a red truck faces north; a camper trailer; garbage dumpster; and a couple of cars, to block everything.

Diane Hoobler asked if the setback should be changed to be more than 10 feet.

Mr. Isaac displayed an aerial view of both properties.

Mrs. Hoobler replied, Bob said this was the only place the building could be built. She said this is not true; they could have moved it over and filled the floodplain. She stated she has built in the floodplain and had \$10,000 spent before even starting on the building.

Mr. Isaac replied in a lot of cases, when it comes to development, the developer wants to put as much of their money into the investment. He explained if they can meet the zoning requirements and it is cheaper than locating it 20 feet to the east within a floodplain, they most likely will go with the savings.

Nathan Larson asked if the main complaint was the light shining on the other residence.

Diane Hoobler replied nobody had complained. She said that it just bothers her that the structures are so close.

Bob Isaac showed where the entire floodplain lays on the property. He explained that the property owner was still required to do some filling. He also reminded the Board that there is an 80-foot setback from the centerline line of Zeandale Road and due to the size of the building, this was really the best location to build.

Monty Wedel also asked if there was a rural water line running through the property.

Bob Isaac showed the Board where the rural water line was located on the GIS map.

Mr. Wedel replied the subject property is complicated.

Bob Isaac said he would visit with Zoning Enforcement Officer, Steve Higgins to verify if a Certificate of Occupancy has been issued and if any items are construction materials that no longer need to be on site.

Mr. Wedel said staff will also review the inoperable vehicles as they are not allowed in a residential zone.

Monty Wedel said he had compiled some information on setbacks from all the communities that staff has been using as examples for zoning regulations, because they have unified development ordinances; zoning and subdivision regulations combined. He said staff likes their formatting and some of their ideas.

He explained Clarion completed the regulations for Laramie, WY and that is where the consultant, Elizabeth Garvin, was employed. He said he picked out things that were similar to our AG District or to our two-acre residential district.

Source	SETBACKS (FT)		
	Front	Side	Rear
Laramie, Wyoming			
Agricultural District	30	30	30
Single-Family (16,000 sq. ft.)	35, 60(A)	10, 5(A)	10, 5(A)
Clay County, Missouri			
Agricultural District	50	25	50
Single-Family (3-acre)	50	25	25
Lake County, Illinois			
Agricultural District	30	30	50
Single-Family Estate (80,000 sq. ft.)	30	19	30
Durham, North Carolina			
Rural Non-Watershed (2-acre)	50	12	25
Suburban (30,000 sq. ft.)	50	12	25
Wake County, North Carolina			
R-80 W (80,000 sq. ft.)	40	20	30
R-40 W (40,000 sq. ft.)	30	15	30
Linn County, Iowa			
Agricultural District	50	10, 50 (Corner)	50
RR 2 Resource District (2-acre)	50	10, 50 (Corner)	50
Land Development Code			
Resource Protection District	30	15	0
Suburban (1-acre)	30	15	30
Unified Development Ordinance (APA Model)			
R-40 (1-acre)	40	20, 4(A)*	20, 4(A)*
* Setback increases 2' for every foot over 12 feet			

Mr. Wedel pointed out the 50-foot side setback for a corner lot, which he said was pretty restrictive since corner lots already have multiple front yard setbacks. He said there is an interesting concept from a Unified Development Code model that was produced by the American Planning Association years ago. He said the side setback was 4-foot; but for every foot the building was over 12-feet high, the setback increased by 2 feet, so the building would not dominate another structure. Mr. Wedel said the other thing to consider is the 10% of lot width - 10-foot maximum requirement has been in place since 1974. He cautioned that if we go to something more restrictive, we will be setting up a number of potential non-conformities all over the county.

Chairman Taul said when the Board approved the subdivision for the two family members that got along and that is what they wanted, the Board tried to accommodate them. He said one

family member sold their property and now has turned into issues. He said this is always what the Board worries about when making decisions.

Nathan Larson asked if there were any regulations that if there is a house on an adjoining tract that a shop/shouse can't be built on the other tract.

Bob Isaac explained the shouse is a principal structure with living quarters and a shop combined. He said some people are choosing to have one structure instead of two or three.

Mr. Larson replied if it was something other than a house, we should have regulations that wouldn't create a lot of nonconformities in the county, as there aren't that many shouses. He said those type of structures need more of a setback due to their size.

Mr. Isaac replied that is what we are referring to.

Monty Wedel replied we could do that or implement shouse regulations, but preferably, keep it as simple as possible.

Diane Hoobler asked if only the height would be considered or should length and width also be considered.

Nathan Larson said there could be noise issues with a shop.

Bob Isaac replied this shop is supposed to be a private shop not a business.

Diane Hoobler replied it is a business.

Mr. Isaac said the Zoning Enforcement Officer will investigate the use. He said this is a two acre tract with topographical issues, floodplain and setbacks from a highway. He said it doesn't leave much acreage left to build on. Mr. Isaac said side setbacks are the same in much higher density zone districts, the 10% lot width or 10' maximum, the side setbacks are 7.5 feet, bringing buildings even closer together.

Tom Taul said he feels this is an isolated situation.

Proposed amendment to Section 8 Agricultural District – Residential Use Designator for an Extraneous Farmstead

Staff explained that a situation has arose that prompted the need of a possible amendment to the zoning regulations regarding text that limits one residential use designator for an extraneous farmstead per original parent tract. Mr. Isaac explained that a 160-acre agricultural tract, which includes two residences, recently sold. He explained that both homes were involved with the agricultural operation on the site and were in compliance with all other requirements. He explained that the second of the two homes was issued a building permit and allowed to be placed on the property due to staff interpretation of the statutes; Riley County exempts a house, if it is determined that it will be used as part of the agricultural operations, from the limitation of one principal building per tract. He said in other words, if a family member is legitimately part of the agricultural operation, they too can build a house or place a house on the same tract as the original home.

Bob Isaac explained that, in this case, the property owner allowed his son to place a house on the same tract as his house. He explained the property owner passed away and the 160-acre tract

was sold; his son only owns his house, not the property underneath it. Mr. Isaac stated that the new property owner is only interested in the farm ground and would like to section off both houses. He explained that although both houses are legitimate extraneous farmsteads, the regulations only permit one (1) extraneous farmstead per original parent tract.

Mr. Isaac said staff feels an amendment to regulations needs to be made to address this issue as there will be similar situations down the road. Staff proposed the following amendment:

SECTION 8 – AGRICULTURAL DISTRICT (AG)

A. Extraneous Farmstead

An extraneous farmstead is a dwelling, with or without adjacent agricultural service buildings, which no longer forms an essential or vital part of an agricultural operation. Reasons for this may vary from the agricultural producer desiring to construct a new residence at a different location to the operator deciding to retire from agriculture and therefore seeking residence off the farm or ranch. Consequently, the agricultural operator desires to sell the former residence(s), with some acreage, for a non-agricultural use.

Conditions for Approval:

2. A residential use designator for an extraneous farmstead is limited to one per original parent agricultural tract, *except an additional residential use designator for an extraneous farmstead shall be permitted when it has been determined by the Planning and Development Department that an additional residence on the original parent tract has been supporting the agricultural operation on such tract.*

Diane Hoobler asked if both houses would be extraneous farmsteads.

Monty Wedel replied yes, the amendment would allow for more than one extraneous farmstead. He said there is no other option that fits and a permit was issued to the son for the modular home for ag purposes.

Nathan Larson asked, he doesn't own the land that the house sits on?

Mr. Wedel replied no.

John Wienck said the father owned the land and the son owned the modular home.

Diane Hoobler asked if he could move the house.

Nathan Larson stated we should never allow this to happen again and the family member should be required to deed so many acres to the other family member.

Mr. Wedel replied there already is a provision to allow a secondary dwelling through an ag exemption.

Mr. Larson said he couldn't imagine anyone owning a house and not own the land it sits on.

Mr. Wedel said don't forget we are going to have situations where we have two houses, basically two extraneous farmsteads, no longer needed on the same tract. He said the amendment will allow this situation to be dealt with.

Chairman Taul said he didn't want more than one extraneous farmstead.

Mr. Larson asked if the two houses are sold and later down the road the new owner wants to build a house, will that be allowed?

Mr. Wedel replied we could do one extraneous farmstead or two. If we do one extraneous farmstead then the son most likely will have to move his home off the land.

Bob Isaac said you have to consider the other situations where there are two stick built houses; not a modular home. He said it would be costly to have to tear down or try to move one of the houses.

Chairman Taul said he still wants only one extraneous farmstead.

Mr. Isaac said if both houses are sold off, yes, the current property owner can build a house if he receives an agricultural exemption.

John Wienck agreed with allowing only one extraneous farmstead.

Mr. Wienck moved to not amend the regulations and keep it as is, with only one extraneous farmstead per tract.

Diane Hoobler seconded. Carried 5-0

Update on Zoning and Subdivision Regulations Re-write

Monty Wedel stated there was no update on the Zoning and Subdivision Regulations Re-write.

Diane Hoobler moved to adjourn. John Wienck seconded. Carried 5-0.

The meeting was adjourned at 9:10 P.M.