



Memorandum

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| To: | Stillwater Township Town Board | Reference: | Asplin Variance |
| Copies To: | Barbara Riehle, Clerk Brent Asplin, Owner Cassandra Swedburg, Applicant | Project No.: | 18409.000 Asplin Variance |
| From: | Evan Monson, Planner | Routing: | |
| Date: | November 11, 2022 | | |

SUBJECT: Variance to construct an Accessory Building prior to construction of the Principal Structure (House)

MEETING DATE: November 17, 2022

LOCATION: 16594 110th Street North, PID 02.030.20.43.0002

APPLICANT: Cassandra Swedburg, Structural Buildings, Inc.

OWNERS: Brent Asplin, Coyote Farm 8586 LLC

ZONING: Agricultural District

REVIEW PERIOD: 60-day period ends December 27, 2022

DESCRIPTION OF THE REQUEST

The property owner is looking to construct a detached accessory building on the site. Under the township's zoning ordinance, a principal structure, such as a house, must be constructed on the lot before an accessory building can be constructed. The only exception to this is if the parcel is over 40 acres and the land is used for an agricultural use such as farming.

Since the owner has not yet constructed a residence on the parcel, an accessory structure is therefore not permitted. The only way to permit an accessory structure prior to a house is through a variance request. The applicants are planning to construct the house after the accessory structure is complete, which would be sometime in 2023.

Variance requests are approved or denied by the Town Board.

PROPERTY INFORMATION

Parcel description: 16594 110th Street North is a large parcel of land located west/northwest of Arcola Trail. The parcel is undeveloped, and comes in at a size of 47.4 acres per Washington County records. The site has some slopes and elevation changes, along with strands of trees and vegetation spread throughout. The parcel has access to 110th Street to the west.

Land use: Vacant



Figure 1: Subject property and neighboring areas, per County GIS. Parcel lines are in orange



EVALUATION OF THE REQUEST

Ordinances

Township Ordinances

The Township's Zoning Ordinance (Chapter Two, Part 3, Section 1.2(2)(A)) requires that accessory structures be either built after or at the same time as construction of the principal residence. This is also a common requirement of zoning ordinances for communities throughout the country. This requirement is meant to preserve the rural residential character and use of the community, assure appropriate placement of structures in accord with the Zoning Ordinance, and to assure that the architectural character of accessory structures is in harmony with the principal residence. Many of the township requirements for accessory structures are dictated by the design and location of the principal structure. The only exception to this is if the parcel is over 40 acres and the land is used for an agricultural use, with the idea that, for example, a large parcel used for farming could have a barn on the site for storage of equipment.

The applicant's parcel is undeveloped. The owner discussed conceptual plans of subdividing the parcel with the Board last year. If this proposed request were to be approved, any subdividing of the land would have to be done in such a way that the proposed accessory structure would meet setback requirements from any new lot lines, as well as that the structure would not exceed the sizes permitted in the ordinance for the size of the parcel. Section 1.2(4)(B) covers the number and size of detached accessory structures allowed on a parcel; the size and number of accessory structures allowed is based on the parcel's size.

Precedence & Similar Requests

The idea of precedence comes up often in zoning requests, especially for variances, since a variance allows an applicant to deviate or break from a typical requirement, and is not something that is commonly reviewed. Variance decisions do not constitute as setting precedence, as each request is to be reviewed individually. An applicant for one variance is not guaranteed, or entitled to, a variance simply because a similar request was approved. Likewise, a variance is not guaranteed denial if a similar request was denied. Each request is reviewed by the Board, in which the information provided by the applicant is reviewed to see if it meets the criteria for a variance (these criteria are listed later in this staff report). This type of role is 'quasi-judicial', since the Board acts like a judge in determining if the criteria are met. Making the same rulings on similar requests, though, can result in a de facto standard being set. In a situation where multiple requests that are similar to each other are approved, it would then make sense to amend the ordinance.

There are records of one example of a similar request in the township to this one. This similar request was approved back in [2009](#) with a number of conditions, one being that the applicant provide an escrow amount to the township that would allow the town to remove the accessory building if the construction of the house were not started within a year.

Comments Received

Building Inspector

The Building Inspector noted that, while not a common request, there are communities he works for that have approved similar variances. Typically, a surety bond of around \$20,000 is required as a condition of approval stating that the house will be built within one year of approval. If the house is not built within the one year, the bond money can be used to raze and remove the structure.



Variance Criteria and Findings

Chapter One, Section 6 of the township's Zoning Ordinance includes the criteria and required process for considering variances. The criteria to consider a variance are identified below in *italics*, followed by the Planner's findings regarding the request.

1. *Variances shall only be permitted when they are in harmony with the general purposes and intent of the Comprehensive Plan and official controls.*
 - a. The 2040 Comprehensive Plan does not get into much detail on the specifics of accessory structures. The Land Use section does have a number of goals and policies to help guide development within the township, such as 'land development requests preserving rural character'. The construction of an accessory structure would not appear to impact the rural character of the area. An accessory structure is intended to be built after or simultaneously as the principal structure, per the official controls (zoning ordinance). The official controls also dictate the size, location, and number of accessory structures on a parcel in the township. The use, while in harmony with the Comprehensive Plan, is not in harmony with the ordinance. The Board could add conditions of approval to ensure the request is in harmony with the purpose and intent of the zoning ordinance.
2. *The property owner proposes to use the property in a reasonable manner not permitted by an official control.*
 - a. The proposed use is for an accessory structure, and eventually a principal residence; both reasonable uses. Due to the site not having a house on it yet, though, the accessory structure is not permitted. If the house were already built or being built, there would be no need for a variance.
3. *The plight of the landowner is due to circumstances unique to the property, not created by the landowner.*
 - a. It is unclear what plight is preventing the applicant from building their proposed accessory structure after or simultaneously as the house. There does not appear to be anything unique about the shape of the parcel or the lay of the land that would prohibit one from developing in the normal order as outlined and permitted in the ordinance. The plight of the landowner appears to be created by the desire to construct the accessory structure prior to a house.
4. *The variance, if granted, will not alter the essential character of the locality.*
 - a. Granting the requested variance would not appear to alter the essential character of the locality, as the proposed location, existing trees, and size of the parcel would make it difficult for others to know the building was even constructed.
5. *Economic conditions alone shall not constitute a hardship if reasonable use for the property exists under the terms of the Zoning Ordinance.*
 - a. If economic conditions, such as cost, are the 'hardship' the applicant faces, then the variance should be denied, as it would be unable to meet this criteria.



6. *The Board may consider the inability to use solar energy systems as a “hardship” in granting of the variance.*

- a. N/A; the requested variance is not related to solar energy systems having adequate access to sunlight.

The findings from the Planner would be that the request does not meet the criteria for a variance. The Board shall discuss the project with the applicants to determine if criteria #3 and #5 can be met. Conditions of approval could be added to ensure that criteria #1 is met.

ACTION REQUESTED

The Town Board can do one of the following:

1. Approve, with or without conditions
 - a. A draft resolution for approval is included, if the Board has findings for approval
2. Deny, with findings for denial
 - a. A draft resolution for denial is included, if the Board concurs with the Planner’s findings for denial
3. Table the request

