

Appeal: The appellant requests a variance to allow an already constructed accessory building located in front of the principal dwelling to remain with a separation between the accessory building and principal structure of greater than 150 feet.

Background

The subject property is located at 8977 NE Hubbell Rd, Bondurant, and is legally described as Lot 2 of Nehring Estates Plat 1, within Section 21 of Township 80 North, Range 22 West of the 5th P.M. (Franklin Township). The property is approximately 59.59 acres in size and is zoned "ER" Estate Residential District. The subject property is located approximately one-half (½) mile north of the corporate limits of Bondurant, where they extend northeast along NE Hubbell Road (Hwy 65), and lies approximately one-half (½) mile southwest of the intersection of NE 94th Avenue/NE Santiago Drive and NE Hubbell Road (Hwy 65). Surrounding properties to the north and east are zoned "ER" Estate Residential District and primarily developed with single-family residences. Properties to the south are primarily agricultural in use and zoning within unincorporated Polk County as well as the City of Bondurant. There are three (3) existing residences located directly southwest of the subject property along NE Hubbell Road within unincorporated Polk County. Properties to the west, located on the west side of NE Hubbell Road, are zoned and utilized agriculturally within unincorporated Polk County, including a few residences. See *Attachment A* for a vicinity map of the subject property and surrounding area.

Summary of Request

The Polk County Zoning Ordinance, *Article 4: Use Regulations, Division 6: Accessory Regulations, Section 1.J* stipulates that an accessory structure may not be located in front of the principal building unless the accessory structure: (1) Is setback a minimum of 100 feet from front property lines; and (2) There is a maximum separation distance between the principal building and accessory structure of 150 feet. The intent of this accessory regulation is to ensure that principal dwellings are the prominent feature of single-family lots along public road frontages. The regulation also ensures that in cases where accessory structures are permitted in front of principal dwellings, the structures are located proximate to one another.

The appellant has constructed a 10' x 20' (200 square feet) accessory building in the western portion of the property near its frontage with NE Hubbell Road, which is being utilized as a chicken coop. The proposed location meets the first criteria, as it is over 100 feet setback from the front property line. However, the second criteria is not met as the proposed building location is approximately 850 feet from the nearest portion of the principal residence on the property. The site plan submitted with the appeal can be found as *Attachment B* to this report. The appellant states the reason the variance is necessary is based on the layout of the property and the location of existing buildings. There are two existing accessory structures in the general vicinity of the subject chicken coop; the first is an approximately 60'x105' accessory structure which was built prior to the platting of the subject property, and is allowed to remain (as noted on the Subdivision Plat) as a legally nonconforming structure, and cannot be expanded, nor reconstructed if it is damaged beyond 60% of its replacement cost, exclusive of the foundation. The second accessory structure in the vicinity is 60'x80' in area, and was granted a variance to

allow the construction in May of 2021, with Docket #21/10242 by the Polk County Board of Adjustment. Staff recommended denial of the proposed variance, as there was adequate space for the building to be constructed elsewhere on the property, which would meet all setback requirements, or would need only a lesser variance.

Because the subject accessory structure is proposed to house animals, it shall adhere to the standard set forth in Article 4, *Use Regulations*, Division 7, *Animal Regulations*, Section 1. *Keeping of Animals*. The following standards apply to this circumstance: “(A) All animals shall be kept in a manner so as to not be a nuisance to the public. Animals not confined to the owner's property and animals kept in such a manner as to affect the public health or welfare shall be considered a nuisance. (D) (4) On parcels zoned AG, AT or ER and ten (10) acres or more in size, there is no limit on the number of livestock kept for private use.”

The appellant completed an approximately 7,800 square feet single-family dwelling in 2021, as well as a new approximately 13,800 square feet accessory barn, both located along the eastern property line in the southeastern portion of the subject property. The appellant recently subdivided the subject property and surrounding ground as part of the development known as Nehring Estates Plat 1. The plat reconfigured two (2) existing dwellings located at 8991 and 9265 NE Hubbell Rd, and created two (2) additional development rights as Lots 2 and 4 at 8977 NE Hubbell Rd (subject property) and 9287 NE Hubbell Rd.

The subject property is the largest lot in the development at approximately 59.59 acres in size. The subject property contains an existing pond and drainageways, and is uniquely shaped. It has approximately 240 feet of frontage onto NE Hubbell Rd, and stretches to the north and east behind the other platted lots.

Staff mailed out 20 notices regarding this request, including the date and time of the public hearing, to surrounding property owners within the 250-foot notification boundary. To-date staff has not received any responses in support or in opposition of this Appeal.

Natural Resources

The subject property contains an existing pond, including a platted ponding easement. The property also contains several drainage easements. Engineered crossings of the drainage easements have been designed for access to the rear of the property for the new single-family dwelling and future barn. There is a small area of mapped 1% annual chance floodplain Zone ‘A’ immediately surrounding a drainageway in the northern portion of the property. This floodplain area will not be impacted by existing or proposed buildable areas of the property.

The site contains varying topography. There is a small area of flat, buildable ground along the property’s frontage with NE Hubbell Rd where the accessory structures are located, at approximately 920 to 930 feet above sea level. There is also a sizable area of relatively flat topography located in the southeastern portion of the lot in the location of the future dwelling and other accessory building at approximately 920 feet above sea level. The rest of the property contains sloping topography along existing drainageways and woodland areas. There is an area of woodlands located in the northern portion of the property along existing drainageways. This woodland area is not proposed for any buildings at this time, and contains a woodlands

protection easement as noted on the final plat of Nehring Estates Plat 1.

Roads & Utilities

NE Hubbell Road (Hwy 65) is a four-lane major arterial State highway maintained by the Iowa Department of Transportation. Public water is provided by Des Moines Water Works. There is an existing two and one-half inch (2½") water main located along the southeast side of NE Hubbell Road. Wastewater treatment for the new residence is provided by a private onsite septic system.

Recommendation

The Board of Adjustment may grant a variance if items 1 through 5 are affirmed.

- 1.) Are there exceptional or extraordinary circumstances or special conditions applying only to the property in question and which do not exist generally on other properties in the same zoning district which makes it impossible to place a use permitted in the district on the property?
No. While the property is unique in its shape and topographical features, there is adequate buildable area on the property to construct the proposed accessory building in a conforming location, or at least in a location that requires less of a setback variance and is more consistent with the intent of the accessory structure regulations.
- 2.) Is the variance necessary for the preservation and enjoyment of property rights possessed by other properties in the same zoning district in the same vicinity? (No variance can permit uses that are prohibited in a district)
No. While residential accessory structures and livestock structures are permitted uses on the property, as stated above, there are other buildable locations on the site requiring no variance, or at least less of a variance more consistent with the regulations.
- 3.) Will the variance preserve adjacent property and support the purpose of the ordinance and the public interest?
No. The proposed location is over 850 feet away from the new dwelling under construction on the subject property. The proposed location would be closer to adjacent residences at 8839 and 8991 NE Hubbell Rd than to the principal dwelling on the subject property. Therefore, any use of the proposed accessory building would be more impactful to these adjacent residences than to the residence on the subject property. Additionally, the appellant has located the chicken coop closer to a neighboring property owner than their own home, potentially creating a nuisance to neighboring property owners to a greater degree than themselves.
- 4.) Is there a special condition or circumstance that did not result from the actions of the applicant?
No. With staff and County support, the appellant recently subdivided the subject property and surrounding ground to create additional buildable lots. Therefore, any perceived hardship is self-created. As part of the recent subdivision process

staff allowed the existing accessory building on the subject property to remain along NE Hubbell Rd as an existing nonconforming structure, and in May of 2021 the Board of Adjustment approved a variance to allow a second accessory structure to be constructed in front of the principal dwelling to remain with a separation between the accessory building and principal structure of greater than 150 feet. Approval of this request would create an additional accessory building in this area of the property that is not consistent with the intent of the accessory building regulations of the Polk County Zoning Ordinance.

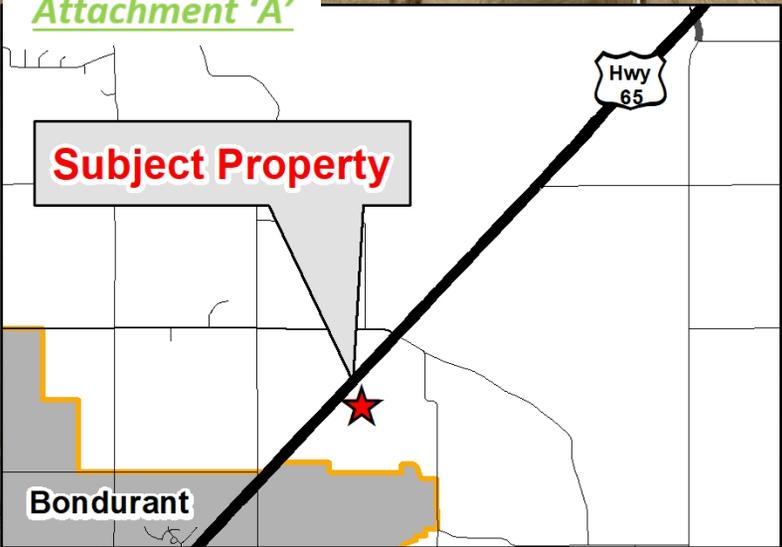
5.) Does the variance support the intent of Article 7 Natural Resource Protection and Article 8 Stormwater and Erosion Control Management of the Polk County Zoning Ordinance?

Yes. The appellant is required to meet the environmental provisions of the Polk County Zoning Ordinance. No environmental areas would be impacted by this proposal.

The Board of Adjustment may grant a variance if items 1 through 5 are affirmed. Since items 1-5 were not answered in the affirmative, staff recommends denial of the requested variance.

Attachment 'A'

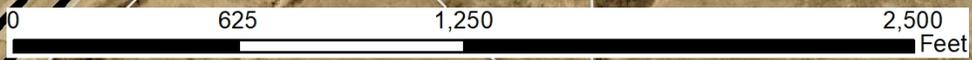
Subject Property



Subject Property



Location of Subject Accessory Building





Bret Nehring <bret@nehringconstruction.com>

(no subject)

1 message

Bret Nehring <bret@nehringconstruction.com>
To: bret@nehringconstruction.com

Thu, Jun 2, 2022 at 10:03 AM



10x20 shed for chicken coop 7' tall

from	house	800'
from	road	230'
from	white Barn	15'
from	Black Barn	71
200'	from	west property line of 8991

Variance Appeal Application



Board of Adjustment Authority

The Polk County Board of Adjustment is empowered by Iowa law and by the Zoning Ordinance of Polk County to hear requests and to make decisions on variance appeals to the Zoning Ordinance for individual properties where provisions of the Ordinance impose a unique and unnecessary hardship on the property owner and where the granting of a variance is not contrary to the intent of the Zoning Ordinance or to the public interest.

Each variance appeal is only a request to have a hearing before the Board of Adjustment. Notice of the hearing will be provided to all property owners located within 250 feet from the subject property. The Board of Adjustment will make a determination at a public hearing whether or not to approve or deny the request based on a staff report, applicant presentation, as well as public input. All appeals that are denied shall not come back to the Board of Adjustment for one year. Refunds will not be made once notice has been sent out to adjacent property owners.

(time stamp)
Official Use Only

Please complete the entire application and review the Variance Regulations on page 3.

1. The undersigned applicant requests that the Board of Adjustment consider this application for a variance appeal for the following general purpose. (Describe briefly the request)

place shed in front of house

2. Subject Property Address: 8977 NE Hubbell

3. Subject Property Zoning District: _____

4. District and Parcel Number: _____

5. Subject Property Legal Description (attach if necessary):

6. Filing Fee: \$336.00 per variance (each provision requested for a variance is considered a separate variance request)

7. Applicant(s) Information:

Bret Nehring
Applicant (Print Name)

[Signature]
Signature

6-2-22
date

owner
Interest in Property (owner, renter, prospective buyer, etc.)

Bret@Nehringconstruction.com
Email

8991 NE Hubbell Bondurant IA 50035
Address, City, State and Zip

515-202-5127
Phone Fax

8. Applicant(s) Representative:

If the appeal is going to be represented by someone other than the applicant please provide that information below

Applicant Representative (Print Name)

Firm or Business Name

Address, City, State and Zip

Email

Phone

Fax

