Appeal: The appellants request a one (1) foot side yard setback Variance to convert an existing accessory building into a principal dwelling with a side-yard setback of 24-feet, in lieu of the required 25-feet. The request also includes a Variance to allow an existing accessory building to remain located in front of the new principal dwelling at less than the required front yard setback of 100 feet.

Background
The subject property is addressed as 12328 NE 29th Street, Elkhart, and is legally described as Parcel A (Book 8681, Page 220), being located within the South ½ of the Northeast ¼ of Section 31, Township 81 North, Range 22 West of the 5th P.M. (Elkhart Township). The property is approximately 1.89 acres in size and zoned “AG” Agricultural District. The subject property is located approximately one-third 1/3 of a mile south of the intersection of NE 29th Street and NE 126th Avenue. The City of Ankeny corporate limits are located approximately one-half (½) of a mile southwest of the property, and the City of Elkhart corporate limits are located approximately one (1) mile east of the subject property. Surrounding properties are all zoned “AG” Agricultural District, and are mostly utilized as crop production fields, though there is one residential property containing a single-family dwelling located directly south of the subject property. See Attachment A for a vicinity map of the subject property and surrounding area.

The subject property previously contained a single-family dwelling, two (2) outbuildings, and four (4) grain storage bins. In September of 2021, a demolition permit was issued to remove the deteriorating single family dwelling from the property, and with the acknowledgment of the property owner, created a nonconforming property, as there was no principal structure/dwelling on the property. Staff communicated to the property owner prior to demolition of the previous dwelling that in order to correct the nonconforming status of the property, the appellants would be required to construct a new dwelling or living quarters within what is currently a storage building on the property. The addition of the living quarters into the existing building converts said building into the principal dwelling and resolves the nonconforming property status.

Summary of Request
The building that is proposed to be converted to the principal dwelling on the subject property features a 24-foot setback from the northern side property line. The Polk County Zoning Ordinance, Article 6: Bulk and Use Standards, Division 2: Single-Family Residential Bulk Standards, Table 6.1: Table of Single-Family Bulk Standards establishes a side-yard setback of 25-feet for a principal residence in the “AG” Agricultural District. In order to convert the existing accessory building into the principal dwelling, said building would be required to meet all setbacks, unless a variance were to be issued. Additionally, 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 second, smaller accessory structure on the property has been surveyed as being 0.2 feet closer to the front property line, and is setback less than 100 feet.
from the front property line (the building currently is setback 71.8 feet from the front property line). The submitted application for this appeal can be found as Attachment ‘B’, and a copy of the survey of the subject property can be found as Attachment ‘C’.

Staff mailed out four (4) 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 no responses have been received regarding this Appeal.

**Natural Resources**
The site topography is flat with little to no change in elevation. The site contains a few mature trees located along the southern property line, and the southeast corner of the property, though no trees will be impacted by the proposed variances. The property is located outside any floodplain areas and contains no other environmental hazards or features.

**Roads & Utilities**
The property has frontage to the east along NE 29th Street, which is a paved two-lane paved roadway maintained by Polk County. Water service is provided by an 8-inch Des Moines Water Works water main, which is located within the right-of-way of NE 29th Street. Wastewater treatment for the subject property is provided by a private onsite septic system, which is located in the northwest corner of the property. The buildings on the property exceed the minimum separation of ten (10) feet required between structures and any portion of the 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?
   Yes. The appellants intend to construct a living quarters inside what was previously considered an accessory structure on the subject property, which increases the setback requirements for said building to those of a principal building. The property features special circumstances, as the hardship was created by demolished a deteriorating dwelling on the property, and converting a building which was not originally intended to house a living quarters, and therefore was not required to meet the setback requirements for a principal building when originally constructed.

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)
   Yes. A single-family dwelling is permitted in the “AG” Agricultural District, and properties which contain a single-family dwelling are permitted to have accessory structures. The subject property in its current state would be considered a nonconforming property as it would have no principal building, and no new improvements would be permitted until a principal dwelling would be established.
The approval of the variances would allow living quarters to be constructed inside an existing building.

3.) Will the variances preserve adjacent property and support the purpose of the ordinance and the public interest?
Yes. The approval of the variances would allow an existing structure to be modified to include a living quarters, therefore established the structure as a principal dwelling. The conversion of the structure, and allowing all buildings on the property to remain as constructed, would have minimal impact on the adjacent properties.

4.) Is there a special condition or circumstance that did not result from the actions of the applicant?
Yes. While the property owner knowingly demolished the purpose-built dwelling on the subject property, therefore created the current nonconformity, the existing structures were constructed prior to the appellant taking ownership of the property. The conversion of the subject building would otherwise be permitted if all setback requirements were met.

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.

The Board of Adjustment may grant a variance if items 1 through 5 are affirmed. Since items 1-5 were answered in the affirmative, staff recommends approval of the variances to convert an existing accessory building into a principal dwelling with a side-yard setback of 24-feet, in lieu of the required 25-feet; and to allow an existing accessory building to remain located in front of the new principal dwelling at less than the required front yard setback of 100 feet. Said variances only apply to the existing buildings on the property, and any new structures shall meet all site development requirements of the most current Zoning Ordinance.
Attachment 'B'

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.

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)

   To allow a variance of 1' on the North 25' setback requirement to allow a residence to be constructed in an already standing building. The original structure was built in 1975/1976. Note: West of building comply with 25' setback requirement.

2. Subject Property Address: 12328 NE 29th, Elkhart, IA

3. Subject Property Zoning District: Residential on Ag/Agricultural

4. District and Parcel Number: 210/00448-002-003

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

   PARCEL A Book 8681 P.5 220 5/2 NE 1/4 LESS .25 ROMP ENSE, SEC 31-81-23

6. Filing Fee: $319 per variance (each provision requested for a variance is considered a separate variance request)

7. Applicant(s) Information:

   Teresa F. Stoelk
   Applicant (Print Name)
   Signature
   10/19/21
   Date

   J. Stoelk
   Signature

   teresa.stoelk@mchsi.com
   Email

   8706 NE Braintree Ct, Ankeny, IA 50021
   Address, City, State and Zip

   (515)321-1843
   Phone

   N/A
   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
9. Property Owner Consent

The application must be signed by all the Titleholders, Contract Purchasers, or Option Purchasers of the subject property. The application may also be signed by the Registered Agent for a corporation or other person with similar legal authority to sign for a property owner. (If additional signatures are needed please attach)

James W. Stock   10/19/01
(Print Name)    Signature    date

Teisha F. Stock   10/19/01
(Print Name)    Signature    date

(Print Name)    Signature    date

(Print Name)    Signature    date

10. State the reason(s) the variance is necessary and why you cannot comply with the regulations of the Zoning Ordinance. Specifically explain the nature of the appeal.

Background: We purchased this acreage with a house that we later determined was uninhabitable for a number of reasons. Consequently, we decided to tear the house down. At the end of the permitting process for demolition, we were informed by the County that we needed living space on the property for it to retain its conforming status.

We are adding a small living quarter within an existing building on the property to allow the property to remain conforming. This building was constructed in 1975/1976 and to our knowledge was twenty-five feet from the property line. We recently had a survey completed by Greg Ross Land Surveying and it appears that the property lines are angled such that the west edge of the building is compliant at 05', however the east corner of the building measures 241' from the property line. The north and west sides of the property are encompassed by a cornfield.

Request: Our request is to allow a 1 foot variance to allow a small living quarter to be established in the existing building.

A completed application with site drawing and filing fee are required for a submittal. Incomplete submittals will not be processed and returned to the Applicant.

Return completed forms to: Polk County Public Works, Planning Division 5886 NE 14th Street, Des Moines, IA 50313
Phone (515) 286-3705 • Fax (515) 286-3437 Email: PublicWorks@polkcountyiowa.gov
Forms available online http://www.polkcountyiowa.gov/PublicWorks/  BOA Calendar   CALENDAR

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