

Docket Number: 20/9447

Appellant: Paul Madison (Property Owner)
917 S Kennedy Ave, Unit 110
Madrid, Iowa, 50156

Appeal: The Appellant requests a front yard setback Variance of 15-feet (from 30-feet to 15-feet) from the northern property line, and a front yard setback Variance of eight (8) feet (from 30-feet to 22-feet) from the western property line, to allow a new principal dwelling to be located on the subject property of 3621 NE 56th Place Berwick, Iowa 50032.

Appeal Given: *“We bought the property not knowing it had 3 30ft setbacks. Upon finding this out there is no room in front of sewer to set our mobile home. The new home is in the same location of the home we tore down as far as being in the setback zone. Even if we were to tear down pool and septic there seems to not be enough room to build on this site. Plus the cost of having to relocate the septic would not be within our means. We think that tearing down an abandon house and replacing it with a nice home would improve property values and make a better appearance to the community and would be better than an empty lot (see app). We have talked to the neighbors and they all seem to like the idea of getting rid of the old house and putting something nice there. There is a 22' frontage area on the 56th St. side before the property line, so no line of vision is obstructed”.* Please see Attachment ‘B’ for the conceptual site plan identifying the proposal.

Background

The subject property is located at 3621 NE 56th Place, Berwick. The property is legally described as an approximately 10,076-square foot parcel, being Lots 3 and 4, except the south 70 feet thereof, in Block 4 of Taylor’s Addition to Berwick, Section 8 of Delaware Township. Block 4 of Taylors Addition to Berwick is a plat that was completed in 1899. The property is zoned “MDR” Medium Density Residential District. The subject property is a double frontage parcel with western frontage onto NE Berwick Drive, and northern frontage onto NE 56th Place. The property has approximately 93-feet of frontage along the western property line and approximately 108-feet of frontage along the northern property line. An existing access and entrance is located along the western property line approximately 15-feet from the northwest corner of the property boundaries. The property address should be reassigned at the time of the building permit review to properly identify a NE Berwick drive address assignment. The surrounding properties to the east, south, and west are all primarily utilized as residential properties and are all zoned “MDR” Medium Density Residential District. The property located adjacent, across NE 56th Place, to the north is vacant and is owned by the Berwick Congregational Church and zoned “MDR”. See Attachment ‘A’ at the end of this report for an aerial vicinity map of the subject property.

The Appellant took ownership of the subject property on June 30, 2020 and demolished an existing home that had been constructed on the property around 1890 according to County assessment records. A demolition permit was not approved or issued prior to the completion of the work. The Appellant did submit a demolition permit application following notification of Polk County Public Works permitting requirements. An existing 24-foot above ground swimming pool is located on the property that was permitted in 2012 along with a non-permitted attached deck that was added to

the pool in approximately 2014. The pool and attached deck are required to meet the minimum setback requirements of 10-feet from the side and rear property lines, 10-feet from the house and 10-feet from any part of an individual septic system. There is one (1) small existing shed located along the eastern boundary that appears to be approximately 120-square feet in size or less. Accessory buildings that are 120-square feet in size or smaller do not require permits however, they are required to meet a minimum setback of five (5) feet from the side and rear property lines. This eastern shed is not entirely located within the property boundaries for the subject property and will need to be removed or relocated to comply with a five (5) foot setback from the eastern and southern property lines. The site visit also revealed several items stored on the adjacent property and leaning against the fence. These items shall be relocated accordingly.

The previous dwelling that had been constructed in approximately 1890 contained non-conforming setbacks due to its existence that pre-dated the recorded plat in addition to pre-dating zoning and building code requirements. The dwelling met a front yard setback of approximately 22-feet from the west, front property line that runs parallel to NE Berwick Drive. The Appellant is requesting to locate the proposed principal dwelling at the same setback of 22-feet from the western property line. Additionally, the previous dwelling met a front yard setback of approximately eight (8) feet from the north, front property line that runs parallel to NE 56th Place. The Appellant is requesting to locate the proposed principal dwelling at a setback of 15-feet from the northern property line. The proposed location would extend into the 30-foot setback for each front yard.

The Appellant has communicated that they were unaware of the required setbacks for the property and had planned to replace the previous dwelling with a 28-foot by 52-foot (1,456 s.f.) manufactured home to be located within the same general building footprint. During the initial application review, an existing Berwick Water easement was identified on the property. The Berwick Water Association has confirmed that the easement is located within the northern 15-feet of the property. This finding required that the Appellant make adjustments to the proposed building footprint. The proposal also identifies constraints on the property due to the location of the existing pool and attached deck as well as the existing septic system and laterals. The pool will need to be relocated based on the proposed site plan. The Zoning Ordinance requires all accessory structures be separated from a principal dwelling by a minimum of 10-feet. The septic system is required to meet the Polk County Environmental Division regulations and will require future coordination to ensure that any proposed system meets the required separation from the principal dwelling and any remaining accessory structures of 10-feet.

Summary of Request

Under the provisions of the Polk County Zoning Ordinance, *Article 6: Bulk and Use Standards, Division 2: Table 6.1 Single-Family Bulk Standards*, the required minimum front setback for single-family dwellings in the “MDR” Medium Density Residential District is 30-feet.

The Polk County Zoning Ordinance, *Article 2: Definitions, Division 3: Words and Terms Defined, Section 1: Word Definitions* defines Lot, Corner as follows:

Lot, Corner. A lot abutting two (2) or more streets at their intersection.

The Polk County Zoning Ordinance, *Article 2: Definitions, Division 2: Words and Terms Defined, Section 1: Word Definitions* defines Lot Line, Front as follows:

Lot Line, Front. In the case of a lot abutting only one (1) street, it is the property line or street right-of-way line separating such lot from such street. In the case of a double frontage lot, each property line or street right-of-way line separating such lot from a street shall be considered to be the front lot line.

A new principal dwelling on the subject property is required to meet the current zoning setback standards for the “MDR: Medium Density Residential District. The Appellant is therefore requesting a front yard Variance of 15-feet (from 30-feet to 15-feet) from the northern property line, and a front yard setback Variance of eight (8) feet (from 30-feet to 22-feet) from the western property line, to allow a 28-foot by 52-foot (1,456 square foot) principal dwelling to be located on the subject property. See *Attachment ‘B’* at the end of this report for a copy of the site plan showing the proposed location of the new principal dwelling.

Staff mailed out 17 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 received one (1) response in support and one (1) response in opposition of this Appeal.

Natural Resources

According to topographic maps, the topography across the property is relatively level with a high elevation of 844-feet in the northwest corner and a low point of 843-feet in the southeast corner. The subject property is not located within the mapped floodplain. A mature evergreen tree is located at the northwest corner of the property with a few shrubs planted within the western setback and a mature canopy tree within the southeast corner of the property. There are no environmental hazards or other significant features on the property.

Roads/Utilities

The subject property has double frontage with an existing access and frontage onto NE Berwick Drive to the west and frontage along NE 56th Place to the north. NE Berwick Drive is classified as a collector roadway and is a hard surfaced street with a 50-foot wide right-of-way. NW 56th Place is classified as a local roadway and is a hard surfaced roadway with a 60-foot wide right-of-way. Wastewater will be provided by an onsite septic system based on information provided by the Appellant. Any proposed wastewater systems will be required to meet the Polk County Public Works Environmental Division requirements including a 10-foot separation from the proposed dwelling and any accessory structures. An existing septic system is shown on the site plan from the previous dwelling however, the system will need to meet the Polk County Environmental Division requirements, or it will need to be abandoned and a new system will need to be installed to meet current requirements. Water service is provided by Des Moines Water Works in coordination with

Berwick Water Association. The Appellant has provided documentation from Berwick Water Association identifying that a Berwick Water easement is located 15-feet from the north property line of the subject property and runs continuous from the east property line to the west property line with dimension of 15-feet in width and 108-feet in length. The Berwick Water easement was created and recorded on January 6, 1992 in Book 6485, Page 102. Electric service is provided by MidAmerican Energy.

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 subject property has double street frontages with two (2) front yard setbacks of 30-feet measured from the front property lines. The rear yard setback is also 30-foot limiting where a dwelling can locate and how big a dwelling can be. The corner lot configuration limits the buildable area available. The previous home was located at a 22-foot setback from the western property line that the Appellant proposes to maintain. The northern property line was met by an eight (8) foot setback by the previous home and the Appellant has proposed an increased setback to 15-feet to remain out of the Berwick Water easement.

- 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. Several other structures on adjacent properties in Berwick are located closer to the property line than what is permitted in the current zoning district. The requested Variance is consistent with structures on the surrounding properties in this area.

- 3.) Will the variance preserve adjacent property and support the purpose of the ordinance and the public interest?

Yes. Several homes within the vicinity of the subject property also encroach into the 30-foot front yard setback. The proposed setback encroachment will not be significantly different from the surrounding properties and shall have minimal impact on adjacent property owners. The proposed dwelling will maintain adequate separation from the street.

- 4.) Is there a special condition or circumstance that did not result from the actions of the applicant?

Yes. The corner lot configuration and the size of the property are not a result of the actions of the Appellant. The lots in this area and specifically the subject property were created many years before zoning was established in Polk County.

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 granting of the requested Variance supports the intent of these provisions.

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 requested Variance with the following conditions:

1. A building permit is required to relocate the swimming pool and attached deck to a location that meets required setbacks and a minimum separation from the home of 10-feet, or a demolition permit will be required to remove the pool and attached deck from the property.
2. The eastern shed shall be relocated to meet a minimum setback of 5-feet from the east and south property lines and maintain a 10-foot separation from the principal dwelling and any part of the septic system.
3. Any proposed septic system is required to meet the Polk County Public Works Environmental Division requirements, including required permits and inspections, prior to moving the proposed dwelling onto the subject property.