

Docket Number: 20/8858

Appellant: Carney Land Properties, LLC, 13570 NE 96th Street, Maxwell, IA 50161 (Property Owner), represented by Matthew Gardner with Gardner Law Firm, P.C., 2900 100th Street, Suite 207, Urbandale, IA 50322.

Appeal: The appellant requests a variance to the rear yard setback requirements for an existing single-family dwelling and accessory structure.

Background

The subject property is located at 13755 NE 96th Street, Maxwell, and is legally described as the North 60 acres of the SW¼ of Section 22, Township 81 North, Range 22 West of the 5th P.M. (Washington Township). The property is zoned "AG" Agricultural District. The subject property is located approximately five one-half (5½) miles northeast of the City of Elkhart. More specifically, the property is located approximately one-half (½) mile north of the intersection of NE 134th Avenue and NE 96th Street. Surrounding properties are zoned and utilized for agricultural purposes, with a few nearby residences at low densities.

The subject property actually consists of two (2) separate properties. The property addressed as 13755 NE 96th Street is approximately 0.77 acres or 33,540 square feet as presently configured, and contains an existing single-family dwelling and accessory structure. This property is owned by Mary L. Davis. According to County records, the dwelling was constructed in 1958, and is approximately 2,685 square feet in size, including an attached garage, patio and deck. The accessory structure is a 1,500 square feet (30' x 50') pole building constructed in 1980. The second property is the adjacent remaining farm ground located within this North 60 acres of the SW¼ of Section 22, Washington Township. This property is utilized agriculturally, and is owned by the appellant Carney Land Properties, LLC.

Due to historical errors in the legal description, the current boundary of the smaller property at 13755 NE 96th Street does not capture the existing dwelling and accessory structure. Instead, the existing legal description creates a parcel boundary approximately 82 feet wide (east to west) by 330 feet long (north to south) along the frontage of NE 96th Street, and lying west of the actual dwelling and accessory structure. Several months back a plat of survey was submitted to Polk County proposing to reestablish this parcel further to the east in order to include the existing structures. That survey was denied by Polk County because it did not meet setback requirements. Specifically, the rear property line was proposed so that the existing dwelling observed a rear yard setback of 48 feet instead of 50 feet, and the accessory structure was proposed at a rear yard setback of two (2) feet instead of ten (10) feet.

Summary of Request

The Polk County Zoning Ordinance, *Article 6: Bulk and Use Standards, Division 2, Table 6.1* requires a minimum rear yard setback of 50 feet for single-family dwellings within the "AG" Agricultural District. Also, *Article 4: Use Regulations, Division 6 Accessory Regulations, Section 1(G.2)* requires an accessory building with a gross floor area of more than 720 feet be located at least ten (10) feet from side or rear property lines. The property owners are in the process of reestablishing the property boundaries for the existing dwelling and accessory structure located

at 13755 NE 96th Street, Maxwell. Historically, the property legal description and boundaries did not correspond to the actual location of these structures. The newly proposed rear property line would create non-conforming rear setbacks for both the dwelling and accessory structure. The dwelling would have a rear yard setback of 48 feet, in lieu of the required 50 feet, and the accessory structure would have a rear setback of two (2) feet, in lieu of the required ten (10) feet. See *Attachment A* at the end of this report for a copy of the proposed plat of survey for the new property boundaries, including the proposed rear setbacks for the existing dwelling and accessory structure.

Staff mailed out six (6) 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 zero (0) responses in opposition to this Appeal.

Natural Resources

The subject property contains no areas of mapped floodplain. Available data does indicate mapped wetlands on the property. There are freshwater forested/shrub wetlands as well as freshwater emergent wetlands located directly north, as well as to the southeast, of the existing dwelling and accessory structure. The wetlands do not impact the existing structures. Any future development will have to comply with all regulations requiring full protection or mitigation of these wetland areas. The remainder of this 60 acres is utilized agriculturally and contains no other environmental hazards or features. The property has sloping topography with a low elevation of approximately 920 feet near the dwelling and accessory structure to the west along NE 96th Street, and a high elevation of approximately 990 feet along the eastern property boundary. There are also a few mature trees located near the existing structures at the front of the property.

Roads & Utilities

The property has frontage to the west onto NE 96th Street, a two-lane paved major collector roadway maintained by Polk County. The subject property is served by a private onsite septic system. Polk County has no official record of this system. However, the recent survey of the property (see *Attachment A*) indicates the existing tank and lateral field are located north and west of the dwelling. It is not clear how water service is provided to the property. Available data indicates the property is within the Iowa Regional Utilities Association service territory for water.

Recommendation

See below for detailed discussion of the criteria which must all be satisfied in order to grant a variance. While staff realizes this situation is the result of historical errors in the property's legal description, it does not constitute an exceptional condition relative to the property which warrants a variance. Through the process of reestablishing the property boundary, the appellant can adjust the new eastern, rear property line by a few additional feet in order to make the dwelling and accessory structure conforming. There are no unique conditions of the property which make this impossible, or even impractical. The amount of additional farm ground potentially kept in production by not adjusting the new rear property line is extremely minimal and not a compelling or legal reason to approve the variance. Furthermore, staff views this as an opportunity to correct this historic irregularity. Therefore, it is not appropriate to create a new set of nonconforming setbacks when no real hardship exists which would prevent the property line from being established in a conforming location. If approved, the variance would allow future

additions or reestablishment of these structures at the same nonconforming setbacks.

A brief discussion of the acquiescence process is also warranted. In discussions with the appellant's representative, staff understands the property owners intend go through the acquiescence process outlined in Iowa Code Chapter 650 to mutually reinstate the boundaries of 13755 NE 96th Street as presented in this request and as represented in *Attachment A*. However, that mutually agreed upon boundary requires this variance to legitimize the creation of nonconforming setbacks for existing structures. If the variance is denied, the property owners may seek the proposed boundary reestablishment regardless through the appropriate legal processes. If a future legal ruling establishes the proposed boundaries as the new legal property lines, then Polk County would have to abide by that ruling. However, staff does not view the County's role in this process as legitimizing nonconforming setbacks as part of a new rural survey of the property. This is particularly true given the absence of any real hardship, and when reasonable alternatives exist.

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 it appears historic errors in the legal description necessitate a new property line establishment in this case, there are no exceptional or extraordinary circumstances or special conditions relative to the property that warrant the granting of a variance. The appellant has the ability to create conforming setbacks through the new survey process, and has not presented a compelling rationale or legal basis for the granting of a variance.
- 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. The residential dwelling and accessory structure are existing and permitted uses within the "AG" Agricultural District. The variance request is to legitimize new nonconforming setbacks for both structures.
- 3.) Will the variance preserve adjacent property and support the purpose of the ordinance and the public interest?
Yes. Surrounding properties are primarily agricultural, including a few residences to the northwest and southwest of the subject property. The dwelling and accessory structure in question are existing, and therefore the variance would not further impact existing properties.
- 4.) Is there a special condition or circumstance that did not result from the actions of the applicant?
No. As previously indicated in criterion #1, there are no exceptional or extraordinary circumstances or special conditions relative to the property that warrant the

granting of a variance. Therefore, the absence of such conditions cannot be, or not be, a result of the actions of the applicant.

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 structures in question are existing, and there is no anticipated impact upon natural resources present on the property. All future development would have to comply with the County's natural resource protection requirements.

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

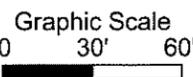
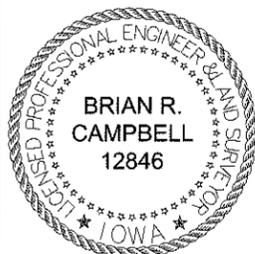
Index Legend

Type.....: Boundary Line Adjustment
 Description: Part of the SW1/4, Section 22-81-22
 Address.....: 13755 NE 96th St.
 Maxwell, IA 50161
 Zoning.....: AG (Agricultural District)
 Owners.....: Mary L. Davis & Carney Land Properties, LLC
 Requester.: Bruce Carney
 Surveyor....: Brian R. Campbell, PE, PLS
 Return to...: Campbell Engineering & Land Surveying
 301 NE Trilein Dr. - Suite #1
 Ankeny, IA 50021
 515-963-4385; info@cesiowa.com

Recorder Use Only

Legend

ACC Asphalt Cement Concrete
 YPC Yellow Plastic Cap
 ○ Set 1/2"Ø Iron rebar YPC #12846
 ▲ Found Monument at Government Corner



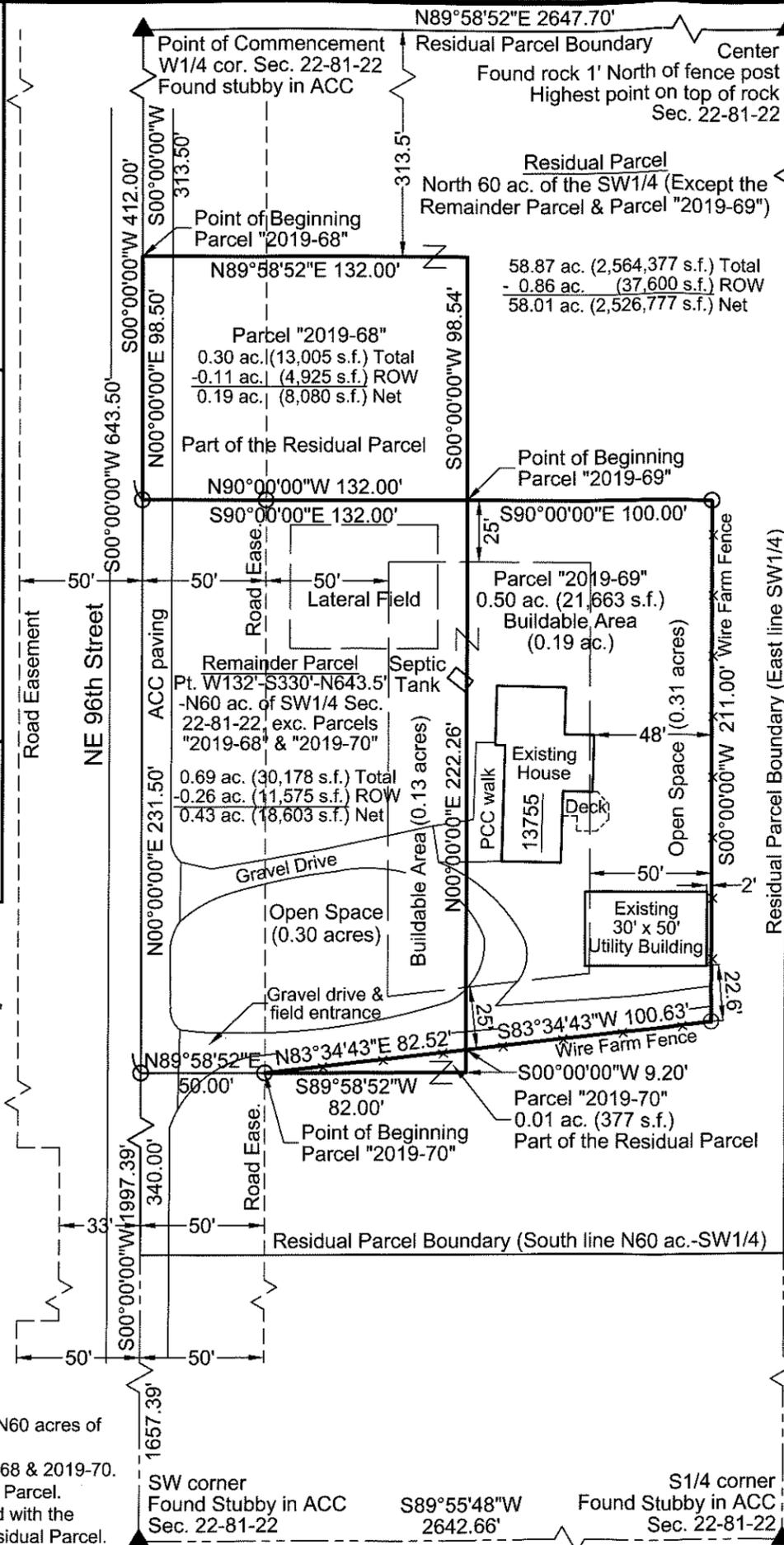
I hereby certify that this land surveying document was prepared and the related survey work was performed by me or under my direct personal supervision and that I am a duly licensed Professional Land Surveyor under the laws of the State of Iowa.

Signed: _____
 Brian R. Campbell, P.E., P.L.S.

Date: _____ Lic. No. _____
 *My license renewal date is December 31, 2019.

Notes:

- The Original Parcel is described as the W132'-S330'-N643.5'-N60 acres of the SW1/4 of Section 22-81-22.
- The Remainder Parcel is the Original Parcel less Parcels 2019-68 & 2019-70.
- Parcel "2019-69" to be deeded and joined with the Remainder Parcel. Parcels "2019-68" & Parcel "2019-70" to be deeded and joined with the remainder of the North 60 acres of the SW1/4 to make the Residual Parcel.



Legal Description - Parcel "2019-68"

Part of the of the North 60 acres of the Southwest Quarter (SW1/4) of Section 22, Township 81 North, Range 22 West of the 5th P.M., Polk County, Iowa, and more particularly described as Commencing at the West Quarter (W1/4) corner of said Section 22; thence S00°00'00"W, 313.50 feet along the West line of said SW1/4 to the Point of Beginning; thence N89°58'52"E, 132.00; thence S00°00'00"W, 98.54 feet; thence N90°00'00"W, 132.00 feet to the West line of said SW1/4; thence N00°00'00"E, 98.50 feet along the West line of said SW1/4 to the Point of Beginning and containing 0.30 acres (13,005 square feet), less 0.11 acres (4,925 square feet) subject to road easement, 0.19 net acres (8,080 square feet) remaining.

Legal Description - Parcel "2019-69"

Part of the of the North 60 acres of the Southwest Quarter (SW1/4) of Section 22, Township 81 North, Range 22 West of the 5th P.M., Polk County, Iowa, and more particularly described as Commencing at the West Quarter (W1/4) corner of said Section 22; thence S00°00'00"W, 412.00 feet along the West line of said SW1/4; thence S90°00'00"E, 132.00 feet to the Point of Beginning; thence S90°00'00"E, 100.00 feet; thence S00°00'00"W, 211.00 feet; thence S83°34'43"W, 100.63 feet; thence N00°00'00"E, 222.26 feet to the Point of Beginning and containing 0.50 acres (21,663 square feet).

Legal Description - Parcel "2019-70"

Part of the of the North 60 acres of the Southwest Quarter (SW1/4) of Section 22, Township 81 North, Range 22 West of the 5th P.M., Polk County, Iowa, and more particularly described as Commencing at the West Quarter (W1/4) corner of said Section 22; thence S00°00'00"W, 643.50 feet along the West line of said SW1/4; thence N89°58'52"E, 50.00 feet to the Point of Beginning, said point lying on the East right-of-way line of NE 96th Street as it presently exists; thence N83°34'43"E, 82.52 feet; thence S00°00'00"W, 9.20 feet; thence S89°58'52"W, 82.00 feet to the Point of Beginning and containing 0.01 acres (377 square feet).

The remaining development on the residual parcel of this survey may consist of one more dwelling unit. A minimum of 55.32 acres of the residual parcel shall be maintained as permanent open space. The Remainder Parcel and Parcel "2019-69" of this survey, which are to be deeded and joined, were recorded as a Rural Survey and were thus exempted from providing the required open space within their boundaries, except the 0.61 acres outside of the designated buildable area, which shall be maintained as permanent open space. As the owner of all land in this survey, I hereby agree to a restriction of the development potential on the residual parcel, through a deed restriction in favor of Polk County, as indicated in the note shown on the residual parcel.

Sign: _____	Date: _____	Sign: _____	Date: _____
Karen A. Carney		Robert W. Carney, Jr.	
Sign: _____	Date: _____	Sign: _____	Date: _____
Bruce R. Carney		Anita M. Todd	
Sign: _____	Date: _____	Sign: _____	Date: _____
Rena J. Thornton		Shonda Hay	
Sign: _____	Date: _____	Sign: _____	Date: _____
Mary L. Davis			

Open Space and Density Calculations

60.00 ac. Total Area	58.87 ac. Base Site Area
- 1.13 ac. Total Road Easement	- 55.93 ac. Minimum Total Open Space
58.87 ac. Base Site Area	2.94 ac. Net Buildable Area
- 0.93 ac. Remainder Parcel (Net) & Parcel "2019-69"	- 0.32 ac. Remainder Parcel & Parcel "2019-69" Buildable Area
57.94 ac. Residual Parcel Area (Net)	2.62 ac. Remaining Buildable Area for the Residual Parcel
58.87 ac. Base Site Area	2.94 ac. Net Buildable Area
x 0.95 Open Space Ratio	x 0.93 Max. Net Density
55.93 ac. Minimum Total Open Space	2.73 Site Density Yield
- 0.61 ac. Remainder Parcel & Parcel "2019-69" Open Space	
55.32 ac. Residual Parcel Open Space	58.87 ac. Base Site Area
	x 0.029 Max. Gross Density
	1.71 District Density Yield

CES Campbell Engineering & Surveying
 301 NE Trilein Drive, Suite 1
 Ankeny, Iowa 50021
 Phone: (515) 963-4385
 E-mail: info@cesiowa.com

FIELD WORK: 4/5/2019	FIELD WORK: MLD1901
DRAWN BY: CGC 4/11/2019	FILE #: RS1901
CHECKED BY: BRC 6/5/2019	SCALE SHEET
REVISER BY: ..	VERT.: 1
REVISER BY: ..	HORIZ.: 1"=60'
REVISER BY: ..	OF 1