

Docket Number: 22/11563

Appellants: Harold & Dawn Phipps
(Property Owners), 5295 NW 134th Avenue, Polk
City, IA 50226

Appeal: The appellants request a Variance to allow a future converted accessory structure to remain in front of a new principal dwelling with a front yard setback of less than 100 feet, and a Variance to allow a separate accessory structure to remain in front of a new principal dwelling with greater than 150 feet of separation from the principal dwelling.

Background

The subject property is located at 5295 NW 134th Avenue, Polk City. The property is approximately 2.28 acres in size, and is legally described as Parcel 'B' from the plat of survey recorded in Book 10882, Page 925 in the Office of the Polk County Recorder, Polk County, Iowa, being located within part of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 19, Township 81 North, Range 24 West of the 5th P.M. (Lincoln Township). The property is zoned "AG" Agricultural District. The surrounding area is also zoned "AG" Agricultural District, and primarily dedicated to row crop production. There is one (1) residence located in close proximity directly adjacent to the west at 5505 NW 134th Avenue. The subject property is located approximately two (2) miles northeast of Polk City, and approximately one-quarter ($\frac{1}{4}$) of a mile east of the intersection of NW 134th Avenue and NW 58th Street. See *Attachment A* for a vicinity map of the subject property and surrounding area.

The subject property is rectangular shaped, having approximately 285 feet of width and frontage on the north side of NW 134th Avenue, and approximately 348 feet of depth. The property contains an existing pole building with living quarters that was originally constructed in 1993 by a previous property owner. The pole building is approximately 42' x 98' (4,116 SF) in size, with a portion finished as a living space for a single-family dwelling. The property also contains an approximately 726 SF garage that was built in 2014, and later attached to the principal residence/pole building structure without the required Building Permit from Polk County. The Polk County Building Division has commented that the breezeway between the pole building residence and garage will have to be removed if the garage was not constructed on footings.

The property also contains a large accessory structure and a number of storage containers located north of the pole barn residence, as well as an accessory swimming pool located just northeast of the residence. The appellants propose to move on a modular home to the property to serve as a new principal residence. The modular home would be located northwest of the current pole barn with living quarters. However, the proposed location would make both the existing pole barn residence and attached garage structure as well as the existing swimming pool nonconforming in terms of accessory structures in front of a principal residence on the property. The appellants are requesting variances to allow these structures to remain located in front of the new proposed residence at less than the required front yard setback, and at a greater separation distance from the new residence, than is allowed by Code.

Summary of Request

The Polk County Zoning Ordinance, *Article 4: Use Regulations, Division 6: Accessory Use Regulations: Section 1. Residential Accessory Buildings: (J)* states: "An accessory building may not

be placed in front of the principal building unless said accessory building: (1) Is setback a minimum of 100 feet from front property lines; and (2) Has a maximum separation distance between the principal structure and accessory building of 150 feet.” The appellant is proposing to remove the existing dwelling unit on the property located within the pole building, and place a new modular residential structure on the subject property to be used as the new principal residence. The proposed location of the new modular residence will create nonconformities with two (2) existing accessory structures. The appellant requests a variance to allow the existing pole building and attached garage at the front of the property to remain in front of the new residence at a front yard setback of approximately 63 feet, in lieu of the required 100 feet. If the 726 SF attached garage has to be converted back to a detached structure per Building Code, the variance would apply to both the pole building residence and garage structure to allow both to be located in front of the new residence at less than the required front setback of 100 feet. Additionally, the appellant requests a variance to allow an existing accessory swimming pool to remain in front of the new residence with a separation distance between the pool and new residence of approximately 165 feet, in lieu of the maximum 150 feet allowed. The submitted application and site plan can be found as *Attachment B* to this report.

Staff mailed out two (2) 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, of the request.

Natural Resources

The subject property has flat topography with little to no change in elevation across the site. The site elevation is approximately 976 to 978 feet. The property is not located within any designated floodplain areas, and contains no other known environmental hazards or features. There are a few mature trees located along the northern property line.

Roads & Utilities

The property has access and frontage along the north side of NW 134th Avenue, including an existing driveway entrance. NW 134th Avenue is a gravel, two-lane local roadway maintained by Polk County. County records appear to indicate that water service is provided by a private onsite well. Wastewater treatment is provided by an existing septic system serving the current living quarters within the pole building, and is located west of that structure. A new wastewater treatment system would be provided to serve the proposed modular residence.

Recommendation

Analysis and recommendation below applies to both Variance requests: 1) Variance to allow the existing 42' x 98' pole building and attached garage to remain located in front of the new modular home at existing front yard setback of approximately 63 feet, in lieu of the required 100 feet (If the 726 SF attached garage has to be converted to a detached structure per Building Code, the variance would apply to both the pole building and garage structure to allow both to be located in front of the new residence at less than the required front setback of 100 feet); and 2) Variance to allow the existing swimming pool to remain located in front of the new modular home with a separation distance of 165 feet, in lieu of the maximum 150 feet allowed.

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. The property already contains a single-family residence within an existing pole building structure. There is adequate room available to create additional living space within the existing building or through an addition to the building.
- 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 property contains an existing single-family dwelling. The Variance is not necessary to establish or continue a principal use.
- 3.) Will the variance preserve adjacent property and support the purpose of the ordinance and the public interest?
No. The Polk County Zoning Ordinance restricts the placement of accessory structures in front of a principal residence to preserve public health, safety and welfare and to ensure reasonable locations and relationships between principal and accessory structures.
- 4.) Is there a special condition or circumstance that did not result from the actions of the applicant?
No. While the current pole building with living quarters was established by a previous property owner, this request is created by the appellants and current owners reconfiguring the property to include a new, separate single-family residence and conversion of the existing residence to an accessory building. Any hardship, real or perceived, is self-created.
- 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 appellants are required to meet the environmental provisions of the Polk County Zoning Ordinance. No such provisions will be impacted by this variance request.

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 variances.

Variance Appeal Application

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2022 MAY 11 AM 11:01



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)

Building permit for modular home needs to be located behind a shop building, garage, attached by breezeway, and an above ground swimming pool.

2. Subject Property Address: 5295 NW 134th Ave, Polk City

3. Subject Property Zoning District: AG

4. District and Parcel Number: 250/00227-004-000

5. Subject Property Legal Description (attach if necessary):
Parcel B BK 10882 P4 925 E 285.8F WLY 1607.72 SW
FRL Y4 Less .22 A RD 245 X 19-81-24

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

7. Applicant(s) Information:

Harold D Phipps
Applicant (Print Name)

Harold D Phipps
Signature

5/4/2022
date

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

coderedhp@gmail.com
Email

5295 NW 134th Ave, Polk City, IA 50226
Address, City, State and Zip

(515) 250-5130
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

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)

Harold D. Phipps

 (Print Name)

Harold D. Phipps

 Signature

5/4/2022

 date

Dawn R. Phipps

 (Print Name)

Dawn R. Phipps

 Signature

5-4-2022

 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.

The house will not fit east of existing shop/garage building due to inadequate set backs and building clearances. Also underground electric service would run under the house.

The house will not fit west of the shop building due to septic drain field and required front set back requirements. Also there is no room for adding a garage at a later date if we decide to add one

**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 5885 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

OFFICIAL USE ONLY			
Received by		Docket Number	
Date Received		Reviewed by	
BOA meeting date		BOA Approved	Y / N

1" = 50'

Handwritten: From ADU Permit 5/3/2022



5505

98

5295

0040

NW 134TH AVE NW 134TH AVE

13197

