

STAFF REPORT  
August 9, 2007

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**No. 07SV033 - Variance to the Subdivision Regulations to waive the requirement to install curb, gutter, pavement, sidewalk, street light conduit, water, sewer as per Chapter 16.16 of the Rapid City Municipal Code**

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**ITEM 46**

GENERAL INFORMATION:

PETITIONER	Homer and Kathy Berger
REQUEST	<b>No. 07SV033 - Variance to the Subdivision Regulations to waive the requirement to install curb, gutter, pavement, sidewalk, street light conduit, water, sewer as per Chapter 16.16 of the Rapid City Municipal Code</b>
EXISTING LEGAL DESCRIPTION	Lot B of Tract 1 of H-O Subdivision, located in the SW1/4 NW1/4 and the NW1/4 SW1/4 of Section 28, T1N, R9E, BHM, Pennington County, South Dakota
PROPOSED LEGAL DESCRIPTION	Lots BR and C of Tract 1 in H-O Subdivision, located in the SW1/4 NW1/4 and the NW1/4 SW1/4 of Section 28, T1N, R9E, BHM, Pennington County, South Dakota
PARCEL ACREAGE	Approximately 16.59 acres
LOCATION	15010 E. Highway 44
EXISTING ZONING	Limited Agriculture District (Pennington County)
SURROUNDING ZONING	
North:	General Agriculture District (Pennington County)
South:	General Agriculture District (Pennington County)
East:	General Agriculture District (Pennington County)
West:	General Agriculture District (Pennington County)
PUBLIC UTILITIES	None
DATE OF APPLICATION	6/8/2007
REVIEWED BY	Jonathan Smith / Todd Peckosh

RECOMMENDATION:

**Staff recommends that the Variance to the Subdivision Regulations to waive the requirement to install curb, gutter, sidewalk, street light conduit, water, sewer and additional pavement along S.D. Highway be approved with the following stipulation:**

- 1. Prior to approval by Council the applicant shall sign a waiver of right to protest**

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future assessments.

**That the Variance to the Subdivision Regulations to waive the requirement to install curb, gutter, sidewalk, street light conduit, water, and sewer along the section line highway be approved with the following stipulation:**

- 1. Prior to approval by Council the applicant shall sign a waiver of right to protest future assessments.**

**That the Variance to the Subdivision Regulations to waive the requirement to install pavement along the section line highway be denied.**

GENERAL COMMENTS:

**(Update, July 31, 2007. All revised and/or added text is shown in bold print.) This item was continued at the July 26, 2007 Planning Commission meeting to allow the applicant to submit additional information.**

The applicant has submitted a Variance to the Subdivision Regulations request to waive the requirement to install curb, gutter, sidewalk, street light conduit, water, sewer and pavement along South Dakota Highway 44 and a section line highway as they abut the property. In addition, the applicant has submitted a Preliminary Plat application (#07PL082) to subdivide a 16.59 acre lot into a 13.33 acre lot identified as proposed Lot BR, and a 3.26 acre lot identified as proposed Lot C. The current lot that is proposed to be subdivided is Lot B of Tract 1 of H-O Subdivision. Staff has noted that the applicant is proposing an increase in density by proposing to subdivide Lot B of Tract 1 of H-O Subdivision into two lots.

The property is located northeast of the intersection of Bradsky Road and South Dakota Highway 44. Currently a single family residence is located on proposed Lot BR. Proposed Lot C is currently void of any structural development. In addition, the property is not located within the municipal boundaries of the City of Rapid City; however, the property is located within the City of Rapid City's Three Mile Platting Jurisdiction. Current zoning of the subject property is Limited Agriculture District by Pennington County.

STAFF REVIEW:

Staff has reviewed the applicant's Variance to the Subdivision Regulations request and noted the following considerations:

WATER AND SEWER:

The applicant indicated that on-site water and sewer would be provided for the subject property. However, the applicant has not submitted plans identifying the location of existing wells or existing wastewater systems. Nor has the applicant submitted any construction plans that identify proposed on-site water systems, or proposed on-site wastewater systems. Staff has noted that for any proposed on-site wastewater system, the applicant shall provide data that demonstrates that the soils are suitable for on-site wastewater treatment systems. Staff finds that additional water and sewer information is needed in order to address the Variance

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request. As such, staff is recommending that the Variance to the Subdivision Regulations to waive the requirement to install water and sewer be continued to allow the applicant additional time to submit water and sewer plans.

**The applicant has submitted a site plan identifying the location of existing and proposed wells and septic tanks. The applicant has also provided data demonstrating that the existing well provides domestic flows of water at five gallons per minute. In addition, the applicant has identified that a second well will be drilled to also provide domestic flows. The City's water system is currently located approximately two miles from the property. Currently, there are not any plans to extend the water system into this area. In the past, the Planning Commission and City Council have granted similar Variance requests when domestic flows are being provided and it is anticipated that City water will not be available in the foreseeable future. As such, staff is recommending that the Variance to the Subdivision Regulations to waive the requirement to install water be approved with the stipulation that prior to City Council approval, the applicant sign a waiver of right to protest any future assessments for the improvement.**

**The property is located downstream from the City of Rapid City's Water Reclamation Plant. As such, the City's sewer system can not currently serve the property. In addition, the Reclamation Plant is located approximately three miles from the property with no current plans to extend service into this area. As such, staff is recommending that the Variance to the Subdivision Regulations to waive the requirement to install a City sewer main be approved with the stipulation that prior to City Council approval, the applicant sign a waiver of right to protest any future assessments for the improvement.**

**SOUTH DAKOTA HIGHWAY 44**

South Dakota Highway 44 is located along the south lot line of the property and is classified as a principal arterial street on the City's Major Street Plan requiring that the street be located in a minimum 100 foot wide right-of-way and constructed with a 40 foot wide paved surface, curb, gutter, sidewalk, street light conduit, water and sewer. Currently, South Dakota Highway 44 is located within a 135 foot wide right-of-way and constructed with an approximate 24 foot wide paved surface. The applicant has requested a Variance to the Subdivision Regulations to waive the requirement to install the curb, gutter, sidewalk, street light conduit, water and sewer and additional pavement. In the past, the Rapid City Planning Commission and the City of Rapid City Council have granted similar Variance requests when the improvement would create a discontinuous street section. As such, staff is recommending that the Variance to the Subdivision Regulations to waive the requirement to install curb, gutter, sidewalk, street light conduit and additional pavement be approved with the stipulation that prior to City Council approval, the applicant sign a waiver of right to protest any future assessment for the improvements.

As noted above, the applicant has not submitted sufficient information to determine if the Variance to the Subdivision Regulations to waive the requirement to install water and sewer can

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be granted. As such, staff is recommending that this item be continued to allow the applicant to submit the information.

SECTION LINE HIGHWAY:

A section line highway abuts the west lot line of proposed Lot BR, a distance of 50 feet. The section line highway is classified as a Lane/ Place street requiring that the street be located in a minimum 49 foot wide right-of-way and constructed with a minimum 24 foot wide paved surface, curb, gutter, sidewalk, street light conduit, water and sewer. Currently, the street within the section line highway is a narrow graveled road with no additional improvements. The road provides access to six lots located north of the property. In addition, the road within the section line highway serves as access to the existing residence located on proposed Lot BR.

The street within the section line highway extends north of South Dakota Highway 44. As noted above, South Dakota Highway 44 is an approximate 24 foot wide paved street. Requiring that the street within the section line highway be paved will provide a continuous street section extending off of South Dakota Highway 44. However, none of the streets within this area have been improved with the balance of the required improvements. As such, staff is recommending that the Variance to the Subdivision Regulations to waive the requirement to pave the street within the section line highway be denied. In addition, staff is recommending that the Variance to the Subdivision Regulations to waive the requirement to install curb, gutter, sidewalk and street light conduit be approved with the stipulation that the applicant sign a waiver of right to protest any future assessment for the improvements.

As noted above, the applicant has not submitted sufficient information to determine if the Variance to the Subdivision Regulations to waive the requirement to install water and sewer can be granted. As such, staff is recommending that this item be continued to allow the applicant to submit the information.

To date, the section line highway has not been dedicated as right-of-way. As noted above, a minimum 49 foot wide right-of-way must be dedicated for the Lane/Place street. The applicant should be aware that the associated Preliminary Plat must be revised to show the dedication of the 49 foot wide right-of-way or a Variance to the Subdivision Regulations must be obtained to waive the requirement to dedicate the right-of-way.

LEGAL NOTIFICATION REQUIREMENT: As of this writing, the white slips from the certified mailings and the green cards have not been returned. Staff will notify the Planning Commission at the July 26, 2007 Planning Commission meeting if this requirement has not been met.