

STAFF REPORT
September 24, 2009

No. 09SV014 - Variance to the Subdivision Regulations to waive the requirement to install curb, gutter, street light conduit, water and sewer along S.D. Highway 44, to waive the requirement to install curb, gutter, street light conduit, water, sewer, to reduce the pavement width from 24 feet to 22 feet and to waive the requirement to dedicate right-of-way along Elkhart Road, Kenosha Road, and Canterbury Road as per Chapter 16.16 of the Rapid City Municipal Code

ITEM 31

GENERAL INFORMATION:

APPLICANT	Walter J. Bradsky
AGENT	Janelle Finck for Fisk Land Surveying & Consulting Engineers
PROPERTY OWNER	Walter Bradsky
REQUEST	No. 09SV014 - Variance to the Subdivision Regulations to waive the requirement to install curb, gutter, street light conduit, water and sewer along S.D. Highway 44, to waive the requirement to install curb, gutter, street light conduit, water, sewer, to reduce the pavement width from 24 feet to 22 feet and to waive the requirement to dedicate right-of-way along Elkhart Road, Kenosha Road, and Canterbury Road as per Chapter 16.16 of the Rapid City Municipal Code
EXISTING LEGAL DESCRIPTION	Lot 5 of Aspen Estates Subdivision, located in the SW1/4 of Section 12, T1N, R6E, BHM, Pennington County, South Dakota
PROPOSED LEGAL DESCRIPTION	Lots 5A and 5B of Aspen Estates Subdivision, located in the SW1/4 of Section 12, T1N, R6E, BHM, Pennington County, South Dakota
PARCEL ACREAGE	Approximately 10.05 acres
LOCATION	7800 Elkhart Road
EXISTING ZONING	Limited Agriculture District (Pennington County)
SURROUNDING ZONING	
North:	Limited Agriculture District (Pennington County)
South:	General Agriculture District - Limited Agriculture District (Pennington County)

STAFF REPORT
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ITEM 31

East: Limited Agriculture District (Pennington County)
West: Limited Agriculture District (Pennington County)

PUBLIC UTILITIES Private on-site water and wastewater

DATE OF APPLICATION 6/10/2009

REVIEWED BY Vicki L. Fisher / Ted Johnson

RECOMMENDATION:

Staff recommends that the Variance to the Subdivision Regulations to waive the requirement to install curb, gutter and water along S.D. Highway 44 be approved with the following stipulation:

- 1. Prior to City Council approval, the applicant shall sign a waiver of right to protest any future assessment for the improvements;**

That the Variance to the Subdivision Regulations to waive the requirement to install street light conduit along S. D. Highway 44 be denied without prejudice;

That the Variance to the Subdivision Regulations to waive the requirement to install curb, gutter, street light conduit, water, to reduce the pavement width from 24 feet to 22 feet and to waive the requirement to dedicate right-of-way along Elkhart Road, Kenosha Road, and Canterbury Road be approved with the following stipulation:

- 1. Prior to Planning Commission approval, well data for the existing well shall be submitted for review and approval demonstrating the current flows and cistern reserve capacity is adequate for domestic use and fire flows; and,**

That the Variance to the Subdivision Regulations to waive the requirement to install sewer along S.D. Highway 44, Elkhart Road, Kenosha Road, and Canterbury Road be denied.

GENERAL COMMENTS:

(Update, September 15, 2009. All revised and/or added text is shown in bold print.) This item was continued at the September 10, 2009 Planning Commission meeting to allow the applicant to meet with staff to discuss the outstanding issues. On September 15, 2009, staff met with the applicant and his consultants to discuss the issues and to review recently submitted information.

(Update, August 31, 2009. All revised and/or added text is shown in bold print.) This item was continued at the August 27, 2009 Planning Commission meeting to allow staff to review recently submitted information. The applicant has subsequently requested a meeting with

STAFF REPORT
September 24, 2009

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ITEM 31

staff to discuss the outstanding issues. The meeting has been scheduled for September 15, 2009. As such, staff recommends that this item be continued to the September 24, 2009 Planning Commission meeting to allow the applicant to meet with staff as requested and to address outstanding issues as needed. The applicant is in concurrence with the recommendation to continue the application to the September 24, 2009 Planning Commission meeting.

(Update, August 19, 2009. All revised and/or added text is shown in bold print.) This item was continued at the July 23, 2009 Planning Commission meeting to allow the applicant to submit additional information and to allow the Pennington County Zoning Board of Adjustment to consider a lot size Variance for the property. On August 4, 2009, the Pennington County Board of Adjustment approved a Variance to reduce the minimum lot size requirement in the Limited Agriculture District from ten acres to 7.01 and 3.05 acres, respectively.

The applicant has recently submitted drainage information addressing street drainage, documentation on proposed total containment wastewater systems to replace the existing on-site system and for a proposed system to be located on the additional proposed lot, well data for the existing well, a Master Utility Plan showing the extension of sewer to the property and along S.D. Highway 44 and a revised site plan showing the location of the existing on-site wastewater system. The information was submitted over several days from August 7 through August 18. To date, the City and County staff have not had sufficient time to review all of the information. As such, staff recommends that the Variance to the Subdivision Regulations be continued to the September 10, 2009 Planning Commission meeting to allow staff to review the recently submitted information with the applicant's concurrence.

(Update, July 9, 2009. All revised and/or added text is shown in bold print.) This item was continued at the July 9, 2009 Planning Commission meeting to allow the applicant to submit additional information and to allow the Pennington County Zoning Board of Adjustment to consider a lot size Variance for the property. To date, the additional information has not been submitted for review and approval. In addition, the Pennington County Board of Adjustment has continued the lot size Variance request to their July 21, 2009 meeting. As such, staff recommends that this item be continued to the August 27, 2009 Planning Commission meeting with the applicant's concurrence.

The applicant has submitted a Variance to the Subdivision Regulations to waive the requirement to install curb, gutter, street light conduit, water and sewer along S.D. Highway 44, to waive the requirement to install curb, gutter, street light conduit, water, sewer, to reduce the pavement width from 24 feet to 22 feet and to waive the requirement to dedicate

STAFF REPORT
September 24, 2009

No. 09SV014 - Variance to the Subdivision Regulations to waive the requirement to install curb, gutter, street light conduit, water and sewer along S.D. Highway 44, to waive the requirement to install curb, gutter, street light conduit, water, sewer, to reduce the pavement width from 24 feet to 22 feet and to waive the requirement to dedicate right-of-way along Elkhart Road, Kenosha Road, and Canterbury Road as per Chapter 16.16 of the Rapid City Municipal Code

ITEM 31

right-of-way along Elkhart Road, Kenosha Road, and Canterbury Road as they abut the property. In addition, the applicant has submitted a Layout Plat to subdivide the property, a 10.06 acre parcel, into two lots sized 3.05 acres and 7.01 acres, respectively.

The property was originally platted in 1999 as a part of the Aspen Estates Subdivision.

The property is located approximately 1 ½ miles west of the City limits of Rapid City on the north side of S.D. Highway 44 and west of Elkhart Road. Currently, a single family residence is located on proposed Lot 5B. Proposed Lot 5A is void of any structural development.

STAFF REVIEW:

Staff has reviewed the Variance to the Subdivision Regulations and has noted the following considerations:

Curb and Gutter: The applicant has submitted a Variance to the Subdivision Regulations to waive the requirement to install curb and gutter along all of the abutting streets. However, drainage information has not been submitted for review and approval to support the request and to demonstrate that the existing street design(s) can accommodate the drainage flows. As such, staff recommends that the Variance to the Subdivision Regulations to waive the requirement be continued to allow the applicant to submit drainage information as identified.

(Update: September 15, 2009) The applicant has submitted a drainage plan showing the existing conditions and demonstrating that the existing street design(s) can accommodate the drainage flows. As such, staff recommends that the Variance to the Subdivision Regulations to waive the requirement to install curb and gutter along all of the abutting streets 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 improvement along S.D. Highway 44.

Street Light Conduit: Since S.D. Highway 44 is a State Highway, an Exception must be obtained to waive the requirement to provide street light conduit along the street. As such, staff recommends that the Variance to the Subdivision Regulations to waive the requirement to install street light conduit along S.D. Highway 44 be denied without prejudice.

Right-of-way: Elkhart Road, Kenosha Road and Canterbury Road are currently located within a 50 foot wide private roadway easement. The Subdivision Regulations require that a minimum 49 foot wide right-of-way be dedicated from this property as a part of the proposed subdivision. Until drainage information is submitted for review and approval to support

STAFF REPORT
September 24, 2009

No. 09SV014 - Variance to the Subdivision Regulations to waive the requirement to install curb, gutter, street light conduit, water and sewer along S.D. Highway 44 and to waive the requirement to install curb, gutter, street light conduit, water, sewer and to reduce the pavement width from 24 feet to 22 feet along Elkhart Road, Kenosha Road, and Canterberry Road as per Chapter 16.16 of the Rapid City Municipal Code

ITEM 31

waiving curb and gutter, staff cannot support waiving the requirement to dedicate the right-of-way in case it is needed to accommodate the improvement. As such, staff recommends that the Variance to the Subdivision Regulations to waive the requirement to dedicate additional right-of-way be continued to allow the applicant to submit the additional information.

(Update: September 15, 2009) As previously noted, the applicant has submitted a drainage plan showing the existing conditions and demonstrating that the existing street design(s) can accommodate the drainage flows. Since curb and gutter is not needed along the street to accommodate the drainage flows and since the difference between the required right-of-way width and the existing right-of-way width is one foot, staff recommends that the Variance to the Subdivision Regulations to waive the requirement to dedicate additional right-of-way be approved.

Water: A well and cistern currently provide water service to the existing residence on proposed Lot 5B. The applicant has not indicated whether the existing well will also serve the future development on Lot 5A or if a new well will be drilled. In addition, water data has not been submitted demonstrating that the existing well can provide adequate domestic and fire flows. Until the water data is submitted for review and approval, the Variance to the Subdivision Regulations to waive the requirement to provide a central water system cannot be supported. As such, staff recommends that the Variance to the Subdivision Regulations be continued to allow the applicant to submit the water analysis information as identified.

(Update: September 15, 2009) The Pennington County Fire Coordinator has highly recommended that all new residential structures on this site include a residential fire sprinkler system. During discussions at the September 15, 2009 meeting with the applicant and his consultants, it was noted that the existing well demonstrating the current flows and cistern reserve capacity has not been submitted for review and approval. Preliminary well data has been submitted for review and approval showing the depth of the well, grouting data and well developed flows. Staff recommends that the Variance to the Subdivision Regulations to waive the requirement to install water be approved with the stipulation that prior to Planning Commission approval, well data for the existing well be submitted for review and approval demonstrating the current flows and cistern reserve capacity is adequate for domestic use and fire flows. In addition, staff recommends that prior to City Council approval, the applicant sign a waiver of right to protest any future assessment for the water line along S. D. Highway 44.

Sewer: The applicant has indicated that the existing residence is currently served by a septic tank and drainfield. In addition, the applicant has submitted soil percolation tests for a future drainfield site to be located on proposed Lot 5A. However, a note on the original plan for

STAFF REPORT
September 24, 2009

No. 09SV014 - Variance to the Subdivision Regulations to waive the requirement to install curb, gutter, street light conduit, water and sewer along S.D. Highway 44 and to waive the requirement to install curb, gutter, street light conduit, water, sewer and to reduce the pavement width from 24 feet to 22 feet along Elkhart Road, Kenosha Road, and Canterberry Road as per Chapter 16.16 of the Rapid City Municipal Code

ITEM 31

Aspen Estates Subdivision states that a “total” wastewater containment system must be installed for each lot. The total containment wastewater system must be designed by a Registered Professional Engineer or a conventional or alternative system may be submitted for review if supported by a complete soils report and geotechnical investigation prepared by a qualified Professional Engineer. In addition, all wastewater system designs and plans must be reviewed and approved by the City and Pennington County.

The Pennington County Planning Department has indicated a complete soils report and geotechnical investigation prepared by a qualified Professional Engineer was not submitted for the existing septic tank and drainfield. In addition, to date the applicant has not submitted a complete soils report and/or a geotechnical investigation prepared by a qualified Professional Engineer to support the proposed on-site wastewater system. There is also concern that additional drainfields within this area could contaminate drinking water since the property is located within the Madison Aquifer Recharge Area. As previously indicated, the County and City have required a minimum 10 acre lot size when the property being subdivided is located within the Madison Aquifer Recharge Area. In addition, the Rapid City’s Master Utility Plan identifies the property within “Tier One” which implies that the area is an anticipated near term development project in lieu of a long range development project. As such, dry sewer must be provided even if on-site wastewater systems are proposed to be utilized in the interim.

To date, the applicant has not submitted a Master Utility Plan demonstrating sewer service to the property. In order to adequately review the Variance request to waive the requirement to provide a central sewer system, a Master Utility Plan must be submitted for review and approval. In addition, a complete soils report and/or a geotechnical investigation prepared by a qualified Professional Engineer must be submitted for review and approval. As previously indicated, since the property is located within “Tier One”, dry sewer must be provided even if on-site wastewater systems are allowed.

(Update: September 15, 2009) The applicant has submitted a Master Utility Plan for review and approval showing the future extension of sewer mains to serve Aspen Estates which has been reviewed and approved by staff. In addition, the applicant has submitted a site plan showing the existing location of the septic tank and drainfield located on proposed Lot 5B. The applicant has indicated that the existing septic system will be replaced with a non-conventional system to reduce the possibility of contaminating source water. In addition, the applicant has submitted documentation identifying several non-conventional systems that have been previously approved by South Dakota Department of Environment and Natural Resources. The applicant has indicated that one of these systems will be utilized on each of the two properties. The applicant has also submitted a soils report and a geotechnical investigation prepared by a Professional Engineer demonstrating that

STAFF REPORT
September 24, 2009

No. 09SV014 - Variance to the Subdivision Regulations to waive the requirement to install curb, gutter, street light conduit, water and sewer along S.D. Highway 44 and to waive the requirement to install curb, gutter, street light conduit, water, sewer and to reduce the pavement width from 24 feet to 22 feet along Elkhart Road, Kenosha Road, and Canterberry Road as per Chapter 16.16 of the Rapid City Municipal Code

ITEM 31

the soils support the proposed non-conventional on-site wastewater system(s).

However, dry sewer must be provided even if on-site wastewater systems are proposed to be utilized in the interim in accordance with the provisions of Chapter 16.16.050 of the Rapid City Municipal Code. The recently completed Source Water Protection Study recommends the installation of dry sewer mains in accordance with the adopted City Standards rather than approving Variances to waive the requirement to insure connection to a central sewer system once the adjacent properties develop and the dry sewer can be connected to the City's system. In addition, the Rapid City's Master Utility Plan identifies the property within "Tier One" which implies that the area is an anticipated near term development project in lieu of a long range development project. As such, staff recommends that the Variance to the Subdivision Regulations to waive the requirement to install sewer be denied.

Legal Notification Requirement: The receipts from the certified mailings have been returned. As of this writing, staff has not received any calls of inquiry regarding this item.