

## **Board of Zoning Appeals Staff Report**

### **Applicant**

Yvonne & Dewey Pennington  
231 330<sup>th</sup>  
Durham, KS 67438

### **Application**

Application number ZP03067. Applicant has requested lot area variance from forty (40) acres to thirty-five and twenty-two tenths (35.22) acres in a "A" Agricultural Zone District.

### **Project Description**

Mr. and Mrs. Pennington own 35.22 acres in part of the northwest ¼ of Section 29, Township 17 South, Range 1 East. This property is located approximately four miles north and six miles west of the City of Durham.

The existing ranch style house and is approximately 1474 sq. ft. There are three outbuildings; a 12' x 16', a 18' x 16' and a 20' x 34' barn.

The applicants have applied for a permit to construct a wood deck onto their residence. A permit to construct has not been issued due to parcel not meeting acreage requirement for an Agricultural Zone District.

### **Planning Issues**

The Public Hearing Notice and Adjacent Property Owner Notifications were completed in accordance with the Marion County Zoning Regulations and Kansas State Statutes. No public comments have been received as of November 7, 2003.

The Marion County Zoning Regulations provide that the following conditions must be met in order to grant a variance:

- 1) The variance requested arises from such condition, which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by and action or actions of the property owner(s) or the applicant.
- 2) The granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.

- 3) The strict application of the provisions of the Marion County Zoning Regulations of which a variance is requested will constitute unnecessary hardship upon the property owner represented in the application.
- 4) The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.
- 5) That granting the variance will not be opposed to the general spirit and intent of the Marion County Zoning Regulations. The purpose of the variance is to provide relief where normal adherence to the regulations is not possible.

Nonconforming parcel was created by subdivision resale to Mr. and Mrs. Pennington on October 23, 1995.

**Staff Recommendation**

Approve lot area variance of no more than four and seven-eighths (4.78) acres. Include condition of approval that all new construction will comply with defined agricultural zone uses from section 2-102 of the Marion County Zoning Regulations and no other use shall be granted under current designation.