

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

### **Applicant**

Terry Graber  
1427 N. Ridge Rd.  
Newton, KS

Derlod and Cynthia Becker  
778 NE 130 Rd.  
Harper, KS 67058

### **Application**

Application number ZP04.059. Applicant has requested an acreage variance from forty (40) acres to thirty-seven (36.6) acres in an "A" Agricultural Zone District.

### **Project Description**

Terry Graber owns thirty-six and six tenths (36.6) acres in the south half of the southeast quarter of Section 32, Township 21 South, Range 2 East. This property is located six miles west of the city limits of the City of Peabody. Applicant intends to construct a residential structure.

### **Planning Issues**

The Public Hearing Notice and Adjacent Property Owner Notification has not been completed in accordance with the Marion County Zoning Regulations and Kansas State Statutes. No public comments have been received as of September 10, 2004.

Yard variances are provided for in the Marion County Zoning Regulations to relieve hardships caused by exceptional narrowness, shallowness or shape of a specific piece of property at the time of the enactment of regulations or restrictions, or by reason of exceptional hardship upon owner of such property.

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.

A similar application was considered by the Marion County Board of Zoning Appeals on July 26, 2001. (Refer to Application ZP01.066)

**Staff Recommendation**

Deny recommendation to approve acreage variance. (REASONS: Precedent allows for acreage variance only for agricultural uses, not for residential uses, Prior denial of acreage variance.)