

Planning Commission/Board of Zoning Appeals Staff Report

Applicant

Marion Cabbage
182 HWY 77
Burns, KS 66840

Application

Application number ZP03.054 and ZP03.055. Applicant is requesting to rezone approximately six and four tenths (6.4) acres from "A" Agriculture to "RR" Rural Residential

Project Description

Marion Cabbage owns six and four tenths (6.4) acres in the northeast quarter of Section 33, Township 22 South, Range 5 East. The farmstead is located north of the City of Burns on HWY 77.

This farmstead contains one residence of approximately 1200 sq. ft., one metal outbuilding, one small greenhouse and one small wood outbuilding. The private wastewater system that serves this property is compliant. The private water well that serves this property is compliant.

Planning Issues

The Public Hearing Notice and Adjacent Property Owner Notification was completed in accordance with the Marion County Zoning Regulations and Kansas State Statutes. No public comments have been received as of September 12, 2003.

The purpose of the "RR" Rural Residential Zone District is to provide a transition zone between agricultural lands and low-density rural residential development. Article 3 of the Marion County Zoning Regulations states that "RR" is suitable in rural locations where adequate public roads and public services are available, but is not suitable in all rural locations. It is inappropriate in areas predominately agricultural in character where public services are adequate only to meet the needs of farm residences and farm operations.

Factors to be considered in a change of zoning classification:

- 1) Whether the change in classification would be consistent with the intent and purpose of the Marion County Zoning Regulations.
- 2) The character and condition of the surrounding neighborhood and its effect on the proposed change.

- 3) Whether the proposed amendment is made necessary because of changed or changing conditions in the area affected, and, if so, the nature of such changed or changing conditions.
- 4) The current zoning and uses of nearby properties, and the effect on existing nearby land uses upon such a change in classification.
- 5) Whether every use that would be permitted on the property as reclassified would be compatible with the uses permitted on other property in the immediate vicinity.
- 6) The suitability of the applicant's property for the uses to which it has been restricted.
- 7) The length of time the subject property has remained vacant or undeveloped as zoned; provided, the use of land for agricultural purposes shall be considered as viable use of the land and not be considered as allowing the land to be vacant or undeveloped.
- 8) Whether adequate sewer and water facilities, and all other needed public services including transportation, exist or can be provided to serve the uses that would be permitted on the property if it were reclassified.
- 9) The general amount of vacant land that currently has the same zoning classification proposed for the subject property, particularly in the vicinity of the subject property, and any special circumstances that make a substantial part of such vacant land available or not available for development.
- 10) The recommendations of permanent or professional staff.
- 11) Whether the proposed amendment would be in conformance to and further enhance the implementation of the Comprehensive Plan.
- 12) Whether the relative gain to the public health, safety, and general welfare outweighs the hardship imposed upon the applicant by not upgrading the value of the property by such a reclassification.
- 13) Such other factors as may be relevant from the facts and evidence presented in the application.

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.

Section 33 of Milton Township contains three "RR" Rural Residential Zone Districts at present time.

KDOT has changed the HWY 77 right of way affecting applicant's property in location and size.

Property was compliant/non-conforming before change in right of way.

Staff Recommendation

Approve a recommendation to rezone proposed property from "A" Agricultural Zone District to "RR" Rural Residential Zone District.

Approve an acreage variance of three and six tenths (3.6) acres