

## STAFF REPORT

<b>Application:</b>	Requests related to the expansion of an existing business. Approvals required include a Variance to construct a 40' x 60' garage/shop addition and a 16' x 24' office addition approximately 0 feet from a side property line (min. 10 feet required) to an existing building on a property used for a truck repair, parts and towing business.
<b>Applicant:</b>	John and Bonnie Farrington
<b>Property Owner:</b>	JB Farrington Properties LLC
<b>Agenda Item:</b>	4(a)

### Background Information:

- **Proposal:** The applicants are proposing to construct two additions to their existing truck repair, towing and parts business. The first addition would be a 40' x 60' garage/shop addition that would be used to allow for inside, heated parking of tow trucks during winter months and additional garage/shop space at other times. The second addition would be for office space.
- **Location:**
  - Property address: 19451 139th Ave
  - Parcel number(s): 27.50.00210 (PIDs 27.50.00100 and 27.15.02620 are also adjacent and used by the same business/property owners)
- **Zoning:** Commercial
- **Lot size:** Approx. 11,650 sq ft (0.27 acres) according to County GIS estimate.
  - Existing Impervious Coverage: About 2,700 sq ft (23.18%)
  - Proposed Impervious Coverage: About 5,770 sq ft (49.53%)
- **Septic System Status:** The property is served by private sewer and water. The sewer system is indicated as being located north of the existing building and not in the area of the proposed addition.
- **Natural Features:**
  - Floodplain: The existing and proposed structures are not within an identified floodplain.
  - Bluff/Steep Slopes: The lot does not contain a bluff. The lot does not contain steep slopes that would impact the proposed improvement(s) to the property.
  - Wetlands: There are not wetlands that are likely to be impacted by the proposed improvement(s) to the property.

**Board of Adjustment Action:** The Board of Adjustment may approve the variance request, deny the request(s), or table the request(s) if the Board should need additional information from the applicant. If the Board should approve or deny the request, the Board should state the findings which support either of these actions.



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**Staff Comments:**

1. The applicant owns multiple parcels. The proposed addition is on a lot that does not contain any buildings now, except for a small part of the existing shed at the rear of the property. The property has been surveyed, but the survey information does not show the existing building in relation to the property line. Staff estimates that the property line is right up against the existing building, making the proposed addition at 0 feet from the property line. The minimum required setback is 10 feet.
2. The proposed garage/shop addition is intended largely to allow for indoor heated storage of tow trucks in winter months to ensure that the tow trucks start when needed for calls. The other addition is for additional office space.
3. After discussion with the Township Attorney, it was determined that the variance application should be addressed from the standpoint of the individual PID that the proposed building/additions would be placed on - not from the standpoint of the combination of all three parcels owned by the applicant. The main impact of this is that the impervious coverage allowable is calculated based on the individual PID rather than all three - meaning they are allowed 75% coverage rather than 50%. The proposed coverage of the individual PID is just a bit under 50% based on Staff's estimate.

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**Staff Recommendation:** Based on the findings of fact and discussion listed below, Staff recommends approval of the proposed Variance only if it is found that the standards for approval have been met.

If the application or some version of the application is approved, Staff would recommend consideration for the following conditions of approval (or tabling of the application to allow for review of revised plans consistent with the following):

1. The applicant implement a plan for managing stormwater that promotes infiltration of water on the property rather than it running off the property.
2. Applicant shall reimburse the Township for all reasonable administrative, legal, planning, engineering and other professional costs incurred in the creation, administration, enforcement or execution of said CUP application or this CUP. Applicant agrees to pay all such reasonable costs within 30 days of billing by the Township. Bills not paid within 30 days of billing by the Township shall accrue interest at the rate of 6% per year. Further, if Applicant fails to pay said amounts within the time permitted, the Township may specially assess such costs against Applicant's Property. Applicant by accepting this CUP knowingly and voluntarily waives any and all rights to appeal any certification/assessment under any applicable statutes, the Constitution, and case law.
3. A certified copy of the Variance shall be recorded by Applicant with the Hubbard County Recorder or Registrar of Titles. It shall include the legal description and property identification number of the parcel as identified herein.
4. Applicant shall at all times comply with all Township, County, State and Federal laws applicable to the property.
5. Applicant shall at all times comply with the conditions of this Variance. Upon written notice of any violation the Applicant shall promptly remedy the violation within the time period specified by the

Township. Any violation not remedied or addressed shall be subject to Variance review and may be basis for Variance termination.

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**Applicable Statutes/Ordinances:** See Appendix A.

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**Findings of Fact:** The following findings of fact are presented by Staff for consideration by the Board of Adjustment:

**1) Variances shall only be permitted when they are in harmony with the general purposes and intent of the official control.**

The spirit and intent of the relevant ordinances are as follows:

The spirit and intent of the ordinance's setback requirements between a building or structure and a side lot line is to require some space between buildings and other improvements and the adjacent lot and to maintain space between structures. Its' intent is also to maintain consistency from one property to the next in this setback.

Findings Supporting Approval

The proposed improvements would be in harmony with the general purpose and intent of the requirements because the purpose of a side yard setback is to ensure adequate space between properties in separate ownership for things like building maintenance, fire protection and space. The proposed addition will be abutting a property also owned by the applicant and as such the side yard setback is in harmony with the intent of the ordinance.

Findings Supporting Denial

The proposed improvements would not be in harmony with the general purpose and intent of the requirements because it would place a building on a property line that provides no space to adjoining properties.

**2) Variances shall only be permitted when they are consistent with the comprehensive plan.**

Findings Supporting Approval

The granting of the requested variance(s) is not inconsistent with the Comprehensive Plan because it would represent an anticipated use within the relevant zoning district(s).

Findings Supporting Denial

The granting of the requested variance(s) would be inconsistent with the Comprehensive Plan because it would result in ordinances not being enforced in a consistent manner.

**3) The property owner proposes to use the property in a reasonable manner not permitted by an official control.**

Findings Supporting Approval

The proposed use of the property is reasonable because it makes reasonable use of the property and existing building space to allow for indoor storage of equipment that currently must be stored outdoors.

Findings Supporting Denial

The proposed use of the property is not reasonable because the building addition does not meet side yard setbacks and increases impervious coverage on the combined properties.

**4) The plight of the landowner is due to circumstances unique to the property not created by the landowner.**

Findings Supporting Approval

The plight of the landowner is due to factors that they did not create because the need for the variance(s) is due largely to the relatively small size of the lot.

Findings Supporting Denial

The plight of the landowner is due to factors that they created themselves because they have a property that is not large enough to accommodate the buildings and outdoor parking areas required for the business.

**5) The variance, if granted, will not alter the essential character of the locality.**

Findings Supporting Approval

The essential character of the area would not be altered because both the current area and the proposed use are commercial in character.

Findings Supporting Denial

None

**6) Economic considerations alone do not constitute practical difficulties.**

Findings Supporting Approval

Economic considerations are not the only reason the applicant cannot meet the requirements of the ordinance because there are non-economic factors involved, as mentioned above.

Findings Supporting Denial

Economic considerations are the only reason the applicant cannot meet the requirements of the ordinance because the primary reason for the variance request is to increase the value of the property for future sale.

**7) No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located.**

Findings Supporting Approval

The proposed use is identified as a conditional use in the zoning district where the applicant's property is located.

Findings Supporting Denial

None

## Appendix A

### Applicable Statutes and Ordinances

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#### Minnesota Statutes

#### **462.357 (2016) OFFICIAL CONTROLS: ZONING ORDINANCE.**

##### Subd. 6. Appeals and adjustments.

Appeals to the board of appeals and adjustments may be taken by any affected person upon compliance with any reasonable conditions imposed by the zoning ordinance. The board of appeals and adjustments has the following powers with respect to the zoning ordinance:

(1) To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative officer in the enforcement of the zoning ordinance.

(2) To hear requests for variances from the requirements of the zoning ordinance including restrictions placed on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the ordinance. The board of appeals and adjustments or the governing body as the case may be, may not permit as a variance any use that is not allowed under the zoning ordinance for property in the zone where the affected person's land is located. The board or governing body as the case may be, may permit as a variance the temporary use of a one family dwelling as a two family dwelling. The board or governing body as the case may be may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

#### Todd Township/Hubbard County Regulations

#### **3.12 VARIANCES**

Variances may only be granted in accordance with Minnesota Statutes, Chapter 462, as applicable. No variance may be granted that would allow any use that is not permitted in the zoning district in which the subject property is located. Conditions may be imposed in the granting of a variance to ensure compliance and to protect adjacent properties and the public interest. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by the

zoning ordinance; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the ordinance. The board of appeals and adjustments or the governing body as the case may be, may not permit as a variance any use that is not allowed under the zoning ordinance for property in the zone where the affected person's land is located. The board or governing body may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

### **3.12.02 Existing Developments**

For existing developments, the application for variances must clearly demonstrate a conforming wastewater treatment system is present for the intended use.

### **3.12.03 Conditions for Variance**

The Board of Adjustment should adopt findings addressing the following questions:

- A. Is the variance in harmony with the purposes and intent of this ordinance?
- B. Is the variance consistent with the comprehensive plan?
- C. Does the proposal put property to use in a reasonable manner not permitted by this Ordinance?
- D. Are there unique circumstances to the property not created by the landowner?
- E. Will the variance, if granted, alter the essential character of the locality?
- F. Additional conditions may be imposed on the granting of a variance if those conditions are directly related to and bear a rough proportionality to the impact created by the variance. Economic considerations alone do not constitute practical difficulties.
- G. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems.
- H. Variances shall be granted for earth sheltered construction as defined in M.S. § 216C.06, subdivision 14, when in harmony with this ordinance.

### **3.12.04 Variance issued to Property**

Variances will be issued to the property and are not transferable and shall remain in effect so long as any condition imposed by the board of adjustment is met.

### **3.12.05 Failure to Implement Variance**

Failure by the owner or applicant to complete the improvements for which the variance was sought, or to comply with the conditions attached to the variance within twelve (12) months of the date of its approval shall void the variance. The board of adjustment, solely at its discretion, may extend the variance upon one occasion for sixty (60) additional calendar days beyond the date of expiration. Any additional extension shall require a new public hearing and approval by the board of adjustment.

### **3.12.06 Recording of Variance**

Variations will be recorded with the Hubbard County Recorder or if Torrens property with the Registrar of Titles.

## **5.05 Commercial District**

The purpose of this district is to promote the concentration of a wide range of commercial and recreational establishments into a general commercial area to service residents and the traveling public. A commercial district is near existing business areas. The commercial district varies in size and depth from the road rights-of-way as shown on the Todd Township Official Land Use Map. This district is intended to meet the following Todd Township Comprehensive Plan goals:

- o Regulate scattered and fragmented commercial uses
- o Support living wage opportunities
- o Identify the types of suitable commercial growth in township

### **5.05.01 Lot Requirements**

A. Minimum acreage: 43, 560 square feet (1 acre)

B. Minimum lot width: 200 Feet

C. Setbacks from:

Property line - 10 feet

Public road right of way - 35 feet (from right-of-way) or 65 feet from the centerline of the traveled roadway, whichever is more restrictive.

County right of way - 35 feet

Township and other rights-of-way - 35 feet

D. Maximum impervious lot surface - 35%

1. The allowable impervious coverage may be increased to 75% on legal nonconforming lots smaller than 0.5 acres, or to 50% on lots of at least 0.5 acres, by conditional use permit and with the submittal and implementation of a comprehensive stormwater management plan acceptable to the Township that emphasizes the onsite treatment and storage of stormwater and any irrigated water through a combination of methods which may include buffer strips, swales, rainwater gardens, retention or infiltration ponds or other acceptable best management practices. The Township may require such plans to be designed by an engineer or other qualified professional and reviewed by an independent engineer or other qualified professional before approving such plan.

### **5.05.02 Permitted Uses**

The following uses are permitted subject to any applicable performance and general development standards contained in Sections 6 and 7 of this ordinance:

A. Accessory uses and structures that are incidental to the principal use

B. Antennas - receiving short wave/private transmitting, personal wireless service and microwave, subject to the conditions of Section 6 & 7 of this ordinance



- C. Bait shops
- D. Beauty shops
- E. Churches
- F. Community buildings
- G. Commercial Day care centers
- H. Eating and drinking establishments
- I. Essential services – distribution and utility substations
- J. Financial institutions
- K. Golf courses and club houses
- L. Government and administrative buildings
- M. Grocery stores
- N. Health clubs
- O. Landscape, nursery, greenhouse or garden sales
- P. Liquor-off sale – must have pre-approved license
- Q. Lumber sales/warehouse
- R. Offices, clinics
- S. Outdoor display
- T. Retail uses
- U. Self-service storage facilities
- V. Solar Energy Systems – Accessory
- W. Veterinary clinics

**5.05.03 Conditional Uses**

The following uses may be allowed as conditional uses following the procedures set forth in Section 3.13 of this ordinance and further subject to the performance and general development standards contained in Section 6 and 7 of this ordinance.

- A. Contractor shop (i.e. plumber/electrician/landscaper)
- B. Drive in businesses
- C. Grain and seed sales and storage
- D. Gas Station (minor repairs) and/or convenience stores
- E. Hotels, motels
- F. Kennels, commercial, boarding only
- G. Motor Vehicle Repair
- H. Outdoor sales lots, including used cars, trucks, trailers and farm implements

- I. Packaging/warehouse
- J. Salvage yard
- K. Solar Farm
- L. Theatres – indoors
- M. Churches
- N. Schools

**5.05.04 Interim Use Permits**

The following uses may be allowed as interim uses subject to the procedures set forth in Section 3.13 of this ordinance and further subject to the performance and general development standards contained in Sections 6 & 7 of this ordinance:

- A. Outside storage/display of goods less than 2 months
- B. Temporary uses/special events Rural Tourism and Event Center