



**STAFF REPORT**

**ON AN APPLICATION FOR:** A VARIANCE request under the terms of the *Zoning and Land Use Regulations for the Unincorporated Territory of Douglas County, Kansas*, from Neal Velasquez requesting a variance to allow a reduction of the required rear setback from 30 feet to 3 feet and a reduction of the required interior side setback from 30 feet to 15 feet for a proposed accessory building, to be located at 2046 N. 400 Road.

<b>APPLICANT/OWNER:</b>	Neal Velasquez, Applicant; Danielle and Neal Velasquez, Owners
<b>LOCATION:</b>	2046 N. 400 Road (Plate № 700708C)
<b>AREA:</b>	2 acres
<b>DATE OF PUBLIC HEARING:</b>	November 18, 2024, 10:00 AM.
<b>DATE PUBLIC NOTICE PUBLISHED:</b>	October 29, 2024
<b>PRESENT ZONING AND LAND USE:</b>	Ag-2 – Transitional Agricultural District, used as a single-family residence.

**SECTION AND REQUIREMENT OF ORDINANCE PERMITTING VARIANCE:**

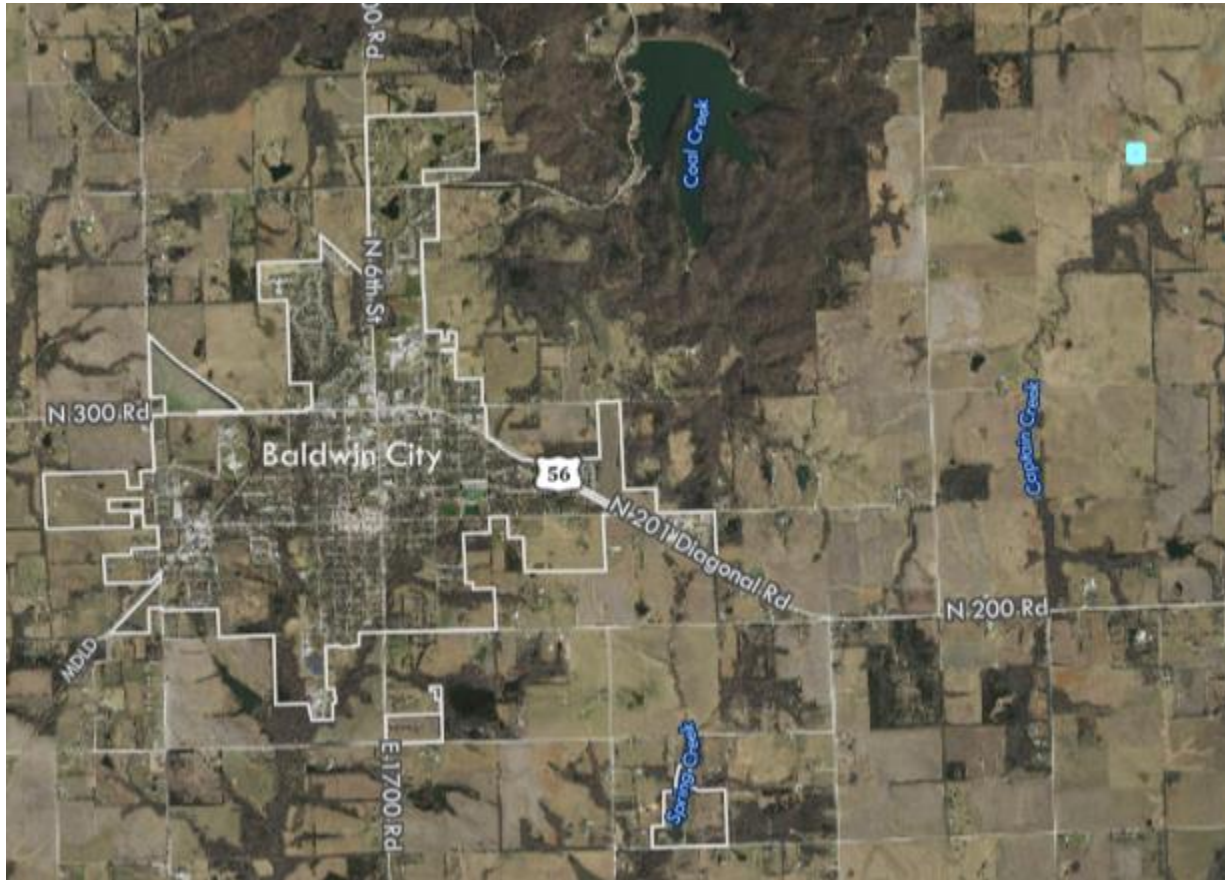
- 12-303-2.04 Dimensional Standards: Establishes a minimum setback of 30 feet from the interior side property line and 30 feet from the rear property line.

**DESCRIPTION OF VARIANCE REQUESTED:**

The subject property, located at 2046 N. 400 Road, is approximately two acres in size and is developed with a single-family residence (built in 1880) and a garage. Staff research has found that the two-acre property has existed since 1983. Properties of these dimensions and area were permitted at that time, and as such, the property is considered vested and legal-nonconforming. The applicant is proposing construction of a 45x60-foot accessory building to store materials related to his guttering business, known as Neal's Guttering. The proposed building is to be located 15 feet from the eastern interior side property line and three feet from the rear (north) property line, which is less than the required 30-foot minimum setback from both property lines.

Douglas County’s zoning regulations regulate businesses operating out of the home. Section 12-306-21 (Home Occupations) requires a minimum acreage of five acres for a business located in an accessory building to be administratively approved. Since the subject property is only two acres in size, a Conditional Use Permit is required. Staff was previously unaware of the business located on the property and has not received any complaints. Staff is currently processing a text amendment to the Zoning Code that would eliminate the acreage minimum, though this is yet to be considered by the Planning Commission or Board of County Commissioners. As such, staff is recommending a stipulation be attached to the variance that business activity within the proposed accessory building shall not commence until the business either obtains a Conditional Use Permit or is registered as a home occupation under the new regulations.

VICINITY MAPS (2024)



## STANDARDS FOR VARIANCES:

- A. **That the variance requested arises from such condition which is unique and which is not ordinarily found in the same zoning district; and is created by this Resolution and not by an action or actions of the property owner or the applicant**

The subject property is approximately two acres in size and was created in 1983, prior to its current ownership. The property is surrounded on three sides by a 118-acre property. Two-acre properties, such as the subject property, are no longer permitted in the unincorporated area and are somewhat uncommon.

- B. **Granting the variance would not adversely affect the rights of adjacent property owners or residents**

The location of the proposed building is not anticipated to adversely affect the rights of adjacent property owners or residents. The neighboring property is largely undeveloped. The placement of the accessory structure as proposed would not limit the neighboring property owner from developing. Additionally, the business use within the structure will be required to comply with the home occupations standards upon registration, which are intended to further protect the rights of neighboring landowners. The applicant has stated that the building will not hinder any views or generate excessive noise.

- C. **The strict application of the regulations for which the variance is requested would constitute unnecessary hardship upon the property owner represented in the application**

The subject property is only two acres in size and thus has limited buildable area due to the setback requirements, the location of the existing residence and septic system, and the location of mature trees. N 400 Rd is a local road, and the front setback is 85 feet from the center of the road. While a building could theoretically be placed in the front of the property, Section 12-306-2.02(d)(6) (Accessory Structure Standards) requires that accessory structures be located behind the front plane of the house on Ag-2-zoned properties.

- D. **The variance desired would not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare**

Accessory buildings used as workshops, storage, and for home occupations are common in the unincorporated area, and construction and home repair uses (e.g. guttering) are most common home occupations. The proposed accessory structure is intended to store material related to the applicant's gutter business. The business will be required to come into compliance with the zoning regulations and register as a home occupation. The home occupation standards are intended to further uphold public health, safety, and welfare.

- E. **Granting the variance desired would not be opposed to the general spirit and intent of these Regulations**

The rear and interior side setbacks are intended to reduce conflicts between neighbors, prevent a high density of structures, limit the spread of fire, allow space between structures for drainage, and allow space for utilities. The surrounding property is not developed with any structures and the applicant has stated that he has spoken with the neighboring landowner and that he has not raised any concerns. Staff provided the applicant with the petition form to document that the neighbor has no concerns, though staff have not received a signed form as of publication.

**PUBLIC COMMENTS:**

Zoning and Codes staff have not received any written comments or phone calls regarding this request as of November 6, 2024.

**AGENCY COMMENTS:**

Staff reached out to several agencies seeking comment regarding the granting of this request. No concerns have been raised. Additional comments may be pending.

**STAFF RECOMMENDATION**

County Staff recommend approval of the variance request to allow a reduction of the required rear setback from 30 feet to 3 feet and a reduction of the required interior side setback from 30 feet to 15 feet for a proposed accessory building, to be located at 2046 N. 400 Road with the following stipulations:

1. This variance shall apply only for a 45x60-foot accessory structure. Any other structures shall comply with the County's adopted zoning regulations or another variance shall be obtained, and;
2. Prior to commencement of commercial activity or storage in the accessory building, a registration certificate for the home occupation or a conditional use permit shall be obtained.

Staff also advise the applicant to hire a surveyor to stake the property lines to ensure the structure and access drives are within the subject property.

Prepared by: Karl Bauer, County Planner

Date: November 6, 2024

# APPENDIX I: SITE PLAN

