

## **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 Donald L. Potter requesting a variance to allow a reduction of the required interior side setback from 30 feet to approximately 20 feet for a proposed accessory building, to be located at 1111 E 1400 Rd.

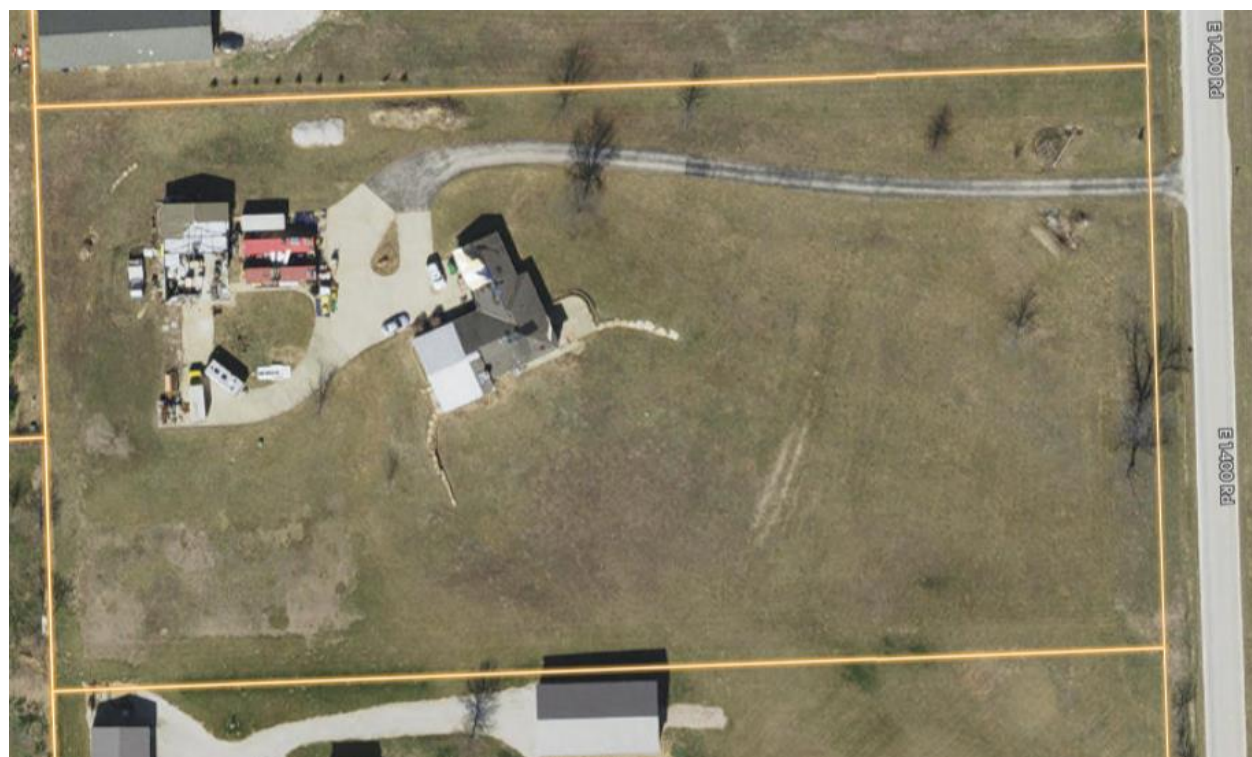
<b>APPLICANT/OWNER:</b>	Donald L. "Lynn" Potter, applicant; Donald and Nancy Potter, owners
<b>LOCATION:</b>	1111 E 1400 Rd (Plate № 800483A10)
<b>AREA:</b>	5.1 acres
<b>DATE OF PUBLIC HEARING:</b>	July 21, 2025, 10:00 AM.
<b>DATE PUBLIC NOTICE PUBLISHED:</b>	July 1, 2025
<b>PRESENT ZONING AND LAND USE:</b>	Ag-2 – single-family residential use

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

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

### **DESCRIPTION OF VARIANCE REQUESTED:**

Lynn Potter has submitted an application for a variance to reduce the required interior side setback from 30 feet to approximately 20 feet for a proposed accessory building. The site of the proposed building, along the north property line, was previously developed with a similar building that was damaged by a tornado in 2019. The accessory building has been condemned and the adjacent single-family residence is subject to a stop work order that will remain until a building remodel permit has been approved. Code Enforcement staff and the Chief Building Official have been working with the applicant to ensure the debris and structures are removed or brought into compliance with Chapter 13 (Construction) of the Douglas County Code. The requested variance would allow further remediation of the property and would allow the applicant to use the existing foundation. The accessory building will be used for hydroponics and automotive- and hobby-related storage

[illegible]

**STANDARDS FOR VARIANCES:*****Criteria supporting approval:***

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

An accessory building used for automotive storage, hobby storage, and hydroponics, is a permitted use in the Transitional Agricultural District, and such buildings are common in the immediate surroundings of the subject property. Allowing the construction of the proposed accessory building per the submitted site plan is not anticipated to adversely affect the rights of neighboring landowners.

- B. **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 property sits on a east-facing downhill slope that the applicant has stated limits buildable sites. The applicant intends to make use of the existing foundation of a condemned accessory building to limit further disturbance of the land and limit the amount of grading that would otherwise be required.

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

An accessory building used for automotive storage, hobby storage, and hydroponics, is a permitted use in the Transitional Agricultural District, and such buildings are common in the immediate surroundings of the subject property. Allowing the construction of the proposed accessory building per the submitted site plan is not anticipated to adversely affect the affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

Furthermore, allowing the redevelopment of the site will result in the removal of a destroyed building that may pose a health and safety hazard.

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

The interior side setback is intended to allow for the free flow of drainage between properties, limit the spread of fire between structures, and reduce conflicts between neighbors. The neighboring properties to the north and south similarly have accessory buildings within the setback. The proposed accessory building would face the rear of the accessory building on the property to the north. There is an existing fence and row of evergreen trees that serve to screen the site.

***Criteria supporting denial:***

- 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 5.1 acres in size and was developed with a house and accessory building. The property slopes downhill to the east. These conditions are typical of the neighborhood and are not unique to this property.

- B. **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 5.1 acres in size and has alternative potential buildable sites that would satisfy the 30-foot interior side setback requirement. Denying the variance would not limit the applicant's ability to use the property as proposed.

**PUBLIC COMMENTS:**

On June 26, 2025, John Botbyl of 1059 E 1400 Rd left a voicemail expressing opposition to granting the variance and raising concern over the condition of the property. He also said he planned to attend the meeting.

As of July 9, 2025, no further comments have been received.

**AGENCY COMMENTS:**

Additional comments may be pending.

**STAFF RECOMMENDATION**

County Staff recommend approval of the variance request to allow a reduction of the required interior side setback from 30 feet to approximately 20 feet for a proposed accessory building, to be located at 1111 E 1400 Rd.

1. This variance shall apply only for an accessory building as proposed in the submitted site plan. Any other structures shall comply with the County's adopted zoning regulations or another variance shall be obtained.

Prepared by: Karl Bauer, AICP – Planner II

Date: July 9, 2025

## APPENDIX I:

# Applicant Responses (Verbatim)

1. Describe the proposed project and explain why a Variance is requested. The explanation should be in sufficient detail for the BZA to completely and clearly understand the project.

*The proposed project is to replace a building damaged in a tornado in 2019. The accessory building will be used for hydroponics and automotive- and hobby-related storage. The variance requested is to allow the building to be approximately 20 feet from the interior side property line.*

2. Explain why the granting of the Variance will not adversely affect the rights of adjacent property owners or residents.

*Buildings of this type are common in the neighborhood, and existing on surrounding properties. The uses are consistent with a rural residential area. The neighboring property to the north has buildings within the required setbacks.*

3. Explain why the Variance requested arises from a condition, or conditions which are unique to the property in question and which are not ordinarily found in the same zoning district, and is not created by an action or actions of the property owner or the applicant.

*The new building needs to be reoriented so that it utilizes the existing concrete foundation and limits the amount of grading that would otherwise need to be done. The slope of the property limits other buildable locations.*

4. Explain why the strict application of the provisions from which a Variance is requested will constitute unnecessary hardship upon the property owner represented in the application.

(The BZA cannot consider economic hardship).

*The side setback requirement limits the locations of where the building could be placed. The slope further limits building sites.*

5. Explain how the Variance will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

*The character of the building and use of the property is consistent with neighboring properties.*

*Redevelopment of the property will remove a destroyed section of building.*

6. Explain why granting the Variance will not be contrary to the general spirit and intent of the Zoning Regulations.

*The intent of the side setback is to limit conflict between neighbors. The neighbor to the north, who is closest to the proposed building, similarly has a building within the setback. The new building would face the rear of his. There is an existing fence and row of evergreen trees that serve to screen the site.*



## APPENDIX II: Site Plan from the Applicant

Please note the site plan indicates a 15-foot setback though the applicant now intends to build to a 20-foot setback.

