

BOARD OF ADJUSTMENT MEETING
May 18, 2022

The Norfolk Board of Adjustment of the City of Norfolk conducted a public meeting in the City Council Chambers, 309 N. 5th Street, on the 18th day of May, 2022, beginning at 6:00 p.m.

Notice of the meeting was given in advance thereof by publication in the Norfolk Daily News, Norfolk, Nebraska, the designated method of giving notice, as shown by affidavit of publication.

Notice was given to the Chair and all members of the Board and a copy of their acknowledgement of receipt of notice and agenda is attached to the minutes. Availability of the agenda was communicated in the advance notice and in the notice to the Chair and Board of this meeting. All proceedings hereafter shown were taken while the convened meeting was opened to the public.

Roll call found the following Board Members present: Brad Love, Sue Haase, Jason Lamml, Tom Skaff (alternate), and Randy Wilcox. Absent: None.

It was noted that a quorum was present.

Staff members present were: Valerie Grimes, Planning and Development Director; Paul Serres, Plumbing/Mechanical Inspector; Steve Nordhues, Building Official; Steven Rames, City Engineer; and Katelyn Palmer.

Chairman Lamml presided and Executive Secretary Elizabeth Lienemann digitally recorded the audio of the proceedings. The meeting was also recorded by Christal McDonald, Court Reporter, Norfolk, Nebraska.

The Chairman, Jason Lamml, called the meeting to order and informed the public about the location of the current copy of the Open Meetings Act posted in the meeting room and accessible to members of the public.

Current Business

Board Member Love moved, seconded by Wilcox to approve the full agenda.

Roll Call: Board Members: Ayes: Love, Haase, Lamml, Skaff and Wilcox. Nays: None.
Motion carried (5-0).

Board Member Haase moved, seconded by Love to approve the August 24, 2021 meeting minutes.
Roll Call: Board Members: Ayes: Love, Haase, Lamml, Skaff and Wilcox. Nays: None.
Motion carried (5-0).

PUBLIC HEARING

Request to consider a variance from the requirements in Section 27-292 (f);
On property zoned I-1, Light Industrial District
Applicant: Big J's Rental, LLC; Location: 2614 Old Hadar Road

Chairman Lammler opened the public hearing at 6:02 p.m. and introduced the request by Big J's Rental, LLC, to seek a variance from the requirements in Section 27-292 (f) of the Norfolk City Code, to allow the use of a septic tank on a lot that is less than three acres in size.

Chairman Lammler gave instruction regarding the hearing procedures and testimony.

Valerie Grimes, Planning and Development Director, 309 N 5th Street, introduced Exhibits 1-11:

EXHIBITS:	DESCRIPTION:
1	City of Norfolk Code – Section 27: Zoning
2	Nebraska State Statute Sections 19-907 thru 19-910 & 19-912 relating to the Board of Adjustment
3	Nebraska Department of Environmental Quality: Title 124 – Rules and regulations for the design, operation and maintenance of onsite wastewater treatment systems
4	Planning Commission Meeting Minutes of February 4, 2020 where Mark Johnson's Addition was discussed
5	Mark Johnson's Addition final plat, subdivision agreement and Resolution 2020-6, all filed & recorded February 25, 2020
6	Big J's Rental, LLC's application, including any supporting documents as part of the application
7	Legal Description & 300 ft Map – Approved by Engineering Division
8	Public Hearing Notice for 5/18/2022 & the Map
9	Affidavit regarding posting of notice of hearing
10	Proof of Publication – Public Hearing Notice – 5/6/2022
11	Proof of Publication – Public Meeting Notice – 5/11/2022
12	List of Owners within 300'
13	Board of Adjustment Agenda Packet for the May 18, 2022 meeting
	Any other materials or testimony provided to the Board during this hearing

Exhibits were accepted into record by Chairman Lammler.

Grimes explained that City Code Section 27-292 (f) –“Individual septic systems may be placed on a lot sized greater than three (3) acres” – was found in the 1982 Zoning Code and was written to align with State's Title 124 which regulates septic systems. She noted that while the State does allow septic systems to be on lots less than three acres, to do so there are other factors such as: soil percolation tests and certain things like that. But, if you are over three acres you automatically get the septic system –

which is why the City included that in the Code. When in the plat process, it is unknown what the soil is like, but if the lot is three acres or greater then it is known that a septic system will be allowed. Exhibit 5 includes the final plat and subdivision agreement, which have a note that the new building would connect into the new septic system. Even though the system is across property lines, the applicant owns both properties and the City was trying to accommodate the developer. She also noted that the existing City sewer line is only 1,300-1,400' from the property and the line may be extended within the next couple of years.

City Engineer, Steven Rames, explained that he was present at the meeting when Big J's Rental came in to discuss the subdivision of the lot. Typically, in an instance like this, the City would create a Sanitary Sewer District to extend the sanitary sewer to the development for them to connect into. He noted that the nature of this meeting would give him to pause ever grant such a request again and the right answer would be to extend City utilities to the area to service that.

Mark Johnson, representing Big J's Rental, LLC, explained that in the early planning stages in 2019 he had a dream for a new shop and additional set storage units. He had 4.75 acres total but was told he can't have more than one building on the property. The City told him that he would have to do a subdivision in order to do his project. The subdivision created the issue for the septic system and needing a minimum three acre lot. If he had created a lot greater than three acres, then he couldn't have had the second set of storage units. He had discussions with the State and learned that the State does not have the three acre requirement but would have the requirement to fit the setbacks and not cross property lines. He had no other choice than to use the existing septic tank with the City granting permission for him to cross property lines because no water/sewer is currently available from the City. The plumber advised that it would not be a good idea to connect to the existing septic system in case of sale of one of the properties or other issues. The applicant moved into the new shop in February 2022 and has had to install a septic holding tank on the new property. He was advised not to connect to the existing septic system due to it not being large enough and the length to go from the existing system to the new tank based on flow. If he had tied to the existing system, a new system would have to be installed to increase the size to accommodate the new building. He didn't want to put a new system on a property that wasn't for the new building. If the City brings sewer to the area, they will tie to it then. He also stated that there are septic tanks on every property around his property which is another part of his reasoning to request the variance.

Chair Lammler asked if the septic system can fit within the setbacks. Johnson confirmed.

Wilcox asked if the soil perc. tests had been done yet. Johnson stated that it had not been since they installed a holding tank. He also noted that the tank is installed to the requirements, setbacks, and rules, that [a septic system] ready to go if the variance is approved.

Chair Lammler asked if approval would still have to come from the State if the lot is less than three acres. Grimes confirmed. Johnson stated that he was aware of this and he had already been talking to the State about the possibility of a septic system on his property.

Rames noted that the area is currently unplanned for utilities to move that direction and it would be dependent on an increase in development. A landowner request may or may not help move utilities there sooner. The property is currently 1,300 feet north of the current utility system.

Johnson noted that a house in City limits was able to have a brand new septic installed, and that lot was two acres.

Love asked if the City was concerned about setting a precedence by allowing a septic system on a smaller lot. Rames stated that his concern was more about the logical extension of City utilities. He also explained the situation with the house receiving a septic system even though it was a two acre lot. Rames noted that his could be a reasonable variance request.

Love asked Johnson if he is planning to connect to City sewer if it becomes available. Johnson stated that if that option was available, he wouldn't be asking for a variance.

Aaron Volkman, Volkman Plumbing & Heating, spoke in favor of the request. He explained that he has been in business in Norfolk since 1972 installing septic systems. He noted that it's not the acres that are so important, but what's in the guidelines and setback rules that become a threat for ground water and neighbors. Unless it has been changed, the State has a minimum of a ½ acre lot for a septic system.

Chair Lammler asked if there would be adequate room on the property for the septic system based on the guidelines Volkman had mentioned. Volkman explained that the septic needed for Johnson's shop would be a small system, similar in size to one needed for a one-bedroom house.

Daniel Hofmann, contractor for Johnson's holding tank, spoke in favor of the request. Hofmann explained that a septic system the size Volkman described can do approximately 200 gallons/day. He also explained a little more about what Johnson could have on his property based on the guidelines. He has been doing septic systems since 1976. Hofmann assumed that the current septic system was less than 1,000 gallons. He also noted that in order for the new shop to tie into the existing septic, he would have to redo the whole thing to bring the system up to State standards.

Martin Griffith, Planning Commission 2013-Present, explained that he voted to approve Johnson's plat. His reasoning for doing so was because he assumed that Johnson had already had qualified individuals inspect the septic system when he asked for permission to tie into the existing system. He stated that if he would have known this information, his vote may have been different.

No one else appeared in support or opposition of the variance request.

Chairman Lammler reviewed the findings of fact before entertaining a motion.

The Board Members discussed the following answers to the four conditions required to grant a variance:

1. True; The strict application of the zoning regulation would produce undue hardship because there is currently not an adequate septic system connected to the building or available to connect to the building.
2. True; Such hardship is not shared generally by other properties in the same zoning district and the same vicinity because most properties in the vicinity and zoning district have their own septic systems.
3. True; The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance because the septic system must be installed by a licensed professional after approval from the state and must stay within the limits and required setbacks of the lot itself.
4. True; The granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice because the property does not have a viable septic system and no City sewer is available within a reasonable distance.

Chairman Lammler closed the public hearing at 7:06 p.m.

Board Member Wilcox moved, seconded by Board Member Haase to grant the variance seeking relief from the requirements set forth in Section 27-292 (f).

Roll Call: Board Members: Ayes: Love, Haase, Lammler, Skaff and Wilcox. Nays: None.
Motion carried (5-0).

Chairman Lammler declared the meeting adjourned at 7:08 p.m.



Elizabeth Lienemann
Board of Adjustment Executive Secretary

Jason Lammler, Chairman
Board of Adjustment