



## CITY OF TONTITOWN PLANNING OFFICE

201 E. Henri de Tonti Blvd.  
479-361-2700  
planning@tontitownar.gov

Meeting: **January 28, 2025**  
Project: **1702 Kissinger Ave.**  
**Setback Request**  
Planner: Brad Spurlock

### AGENDA ITEM **PH1, BOZA1** VARIANCE REQUEST 1702 Kissinger Ave Parcel #: 830-38160-000

**SUMMARY:** The applicant is requesting a variance on setback requirements located at Kissinger Ave. Property is located on 2.02 acres.  
**CURRENT ZONING:** A, (Agriculture)  
**PROPOSED USE:** A, (Agriculture)  
**CITY WARD:** 1 – Amber Ibarra and Misty Piazza

#### **INFRASTRUCTURE SERVICE AREAS (not a guarantee of service availability):**

**Water:** Tontitown Water  
**Sewer:** Septic  
**Electric:** Ozarks Electric  
**Cable:** Cox Communications  
**Phone:** AT&T  
**Natural Gas:** Black Hills Energy  
**School District:** Springdale

#### **PROJECT SYNOPSIS:**

The owner(s) of the property, Jeffrey and Tonya Kissinger, are requesting a setback variance request to install a 24' x 30' shop building located on the premises. Construction has begun on the shop and Tontitown building inspector informed landowners of the setback requirement. Currently the shop is 21' from the property line.

#### **153.262 POWERS AND DUTIES**

The Board of Zoning Adjustment shall have all the powers and duties prescribed by law and by these regulations, which are more particularly described as follows:

(B) To authorize upon appeal, in specific cases, such variance from the terms of this zoning chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of these regulations would result in unnecessary hardship that would deprive the owner of any reasonable use of the land or building involved. A variance from the terms of these zoning regulations, shall not be granted by the Board of Zoning Adjustment unless and until:

**(1) The applicant demonstrates that special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district; that literal interpretation of the provisions of these regulations would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of these regulations; that special conditions and circumstances do not result from the actions of the applicant; and that granting the variance requested will not confer on the applicant any special privilege that is denied by the zoning regulations to other lands, structures, or buildings in the same district.**

*STAFF ANALYSIS: The proposed location of the shop on the submitted information does not show any unusual physical limitations to the property.*

**(2) No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.**

*STAFF ANALYSIS: The existing site use is residential, and the conditions are sufficient grounds to approve the variance request.*

**(3) The Board of Zoning Adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of land, building, or structure.**

*STAFF ANALYSIS: The variance the staff has reviewed has determined the setback required is a minor variance. No other structures shall be permitted with the setback variance allowed for the shop. If the shop is ever destroyed or removed, all future structures must adhere to the setbacks. As the recreational use of a shop is minor, staff does not feel the impact will be any more significant than that of non-permanent recreational items that could exist today.*

**(4) The Board of Zoning Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of these zoning regulations and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.**

*STAFF ANALYSIS: Granting of this variance request will be in general harmony with the zoning regulations since a setback is being adhered to. Granting this variance will not be detrimental to public welfare.*

**(5) In granting any variance, the Board of Zoning Adjustment may prescribe appropriate conditions and safeguards that it deems necessary or desirable. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of these regulations.**

*STAFF ANALYSIS: The granting of this variance will be upheld by the Building Inspection to ensure the shop is not constructed closer to the property line than approved in the variance.*

**(6) Under no circumstances shall the Board of Zoning Adjustment grant a variance to allow a use not permissible under the terms of these zoning regulations in the district involved, or any use expressly, or by implication, prohibited by the terms of these regulations in said district.**

*STAFF ANALYSIS: Per the Code 153.140, accessory buildings/uses are permitted in all residential zones. The accessory building/use will conform to the location, size and height requirements set forth in Code 153.141.*

**Streets:**

This property is located at Kissinger Ave.

**NEIGHBOR COMMENTS:** All neighboring properties within 200 feet of the property boundary were notified by certified mail of this project. Several comments were received stating that they had no objections to the variance request. Inserted into packet.

**STAFF FINDINGS:** *Per City Code 153.262, "a literal enforcement of the provisions of the regulations do result in unnecessary hardship that would deprive the owner of any reasonable use of the land or building involved." Due to the existing site conditions that are peculiar to the site that include site topography, existing utility and residence location, mature trees and lot size, only one location on the project site can accommodate the desired accessory building/use. Granting this variance would not afford the landowner a special privilege. Granting of this variance will not be injurious to neighboring properties.*

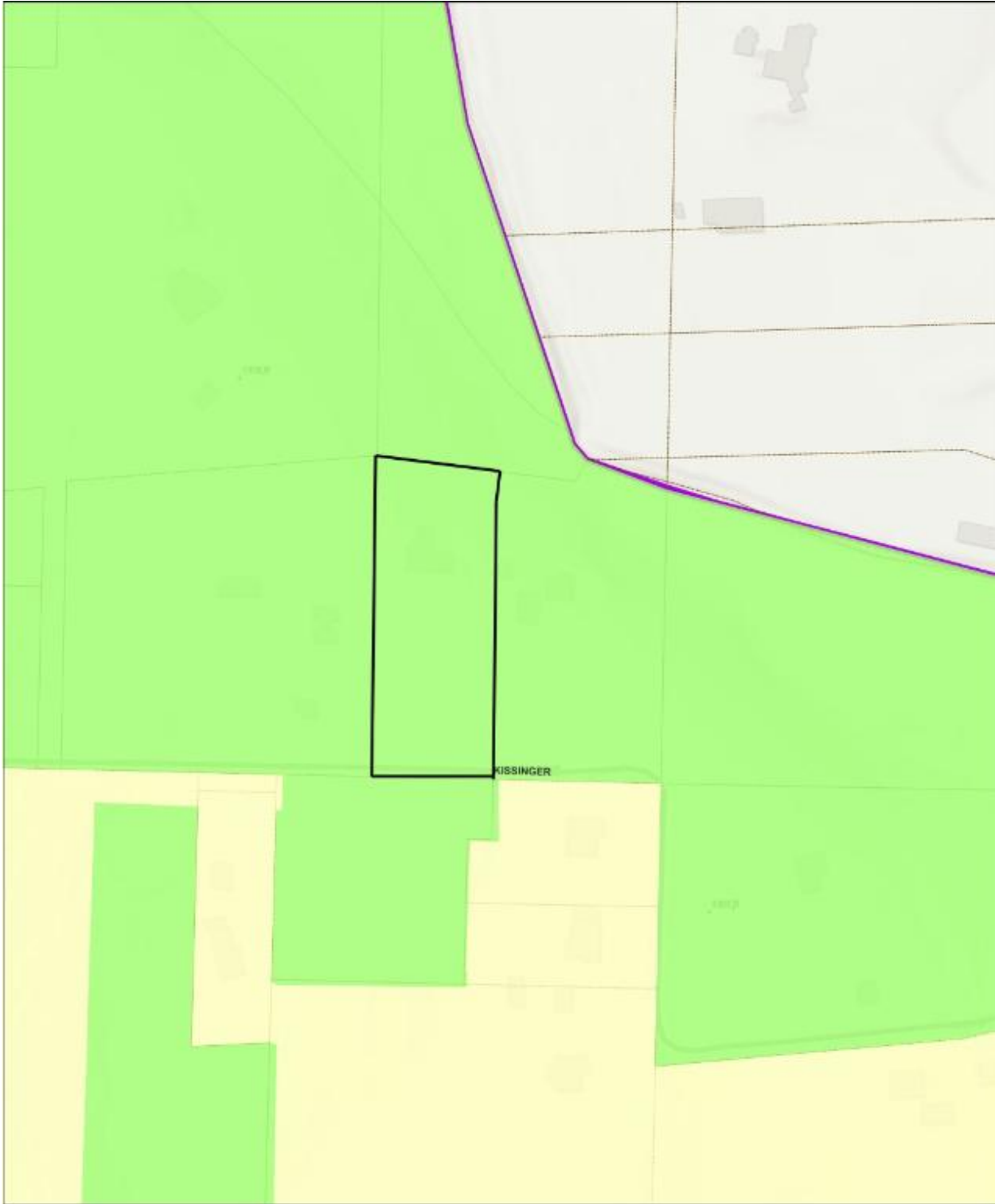
**STAFF RECOMMENDATIONS:**

Although the case of a hardship is minimally stated, staff recommends the approval of the variance request to vary from the required setback. Board of Zoning has final vote.

Figure 1: Vicinity Map



Figure 2: Current Zoning Map



**Figure 3: Setback requirements**

<b>Category Names</b>	<b>Agriculture</b>
Density	1 unit/5 acres
<b>Setbacks</b> for 1- and 2-story structures	
Front Setback	30'
Side Setback	30'
Street side setback	30'
Rear setback	30'