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LISA SMITH, COUNTY RECORDER
MADISON COUNTY IOWA

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Type of Document

**VARIANCE 001-19
SMITH PROPERTY 1705 W. SUMMIT**

PREPARER INFORMATION:

Zoning Office for Gerald Smith 515-773-4358

TAXPAYER INFORMATION:

Smith, Gerald
1705 W. Summit
Winterset, IA 50273

✓ **RETURN DOCUMENT TO:**

Smith, Gerald
1705 W. Summit
Winterset, IA 50273

GRANTOR:

GRANTEE:

LEGAL DESCRIPTION:

.98A IN SE SE SE., 1705 W. Summit

Document or instrument of associated documents previously recorded:
(if applicable)

BOARD OF ADJUSTMENT FINDINGS OF FACT AND LEGAL PRINCIPLES UPON WHICH THE BOARD ACTS:

Section 17 of the Madison County Zoning Ordinance defines the jurisdiction and powers of the Board of Adjustment as prescribed by the State of Iowa.

Section 17 D Jurisdiction and Powers of the Board of Adjustment

D. Jurisdiction and Powers of the Board of Adjustment.

1. The Board of Adjustment shall have the following powers and duties.
 - a. To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in enforcement of this Ordinance.
 - b. To hear and decide applications for conditional use permits and exceptions upon which the Board is required to address by other sections of this Ordinance.
 - c. To grant a variance from the terms of this Ordinance when a property owner can show that his property was acquired in good faith and where by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or where by reason of exceptional topographical conditions of other extraordinary or exceptional situation, the strict application of the terms of this Ordinance actually prohibits the use of his property in a manner reasonably similar to that of other property in the same district, and where the Board is satisfied under the evidence before it that a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship, and so that the spirit of this Ordinance shall be observed and substantial justice done. To establish unnecessary hardship, a property owner must show all of the following elements:
 - i. The land in question cannot yield a reasonable return from any use permitted by the regulations of the district in which the land is located. Failure to yield a reasonable return may only be shown by proof that the owner has been deprived of all beneficial or productive use of the land in question. It is not sufficient merely to show that the value of the land has been depreciated by the regulations or that a variance would permit the owner to maintain a more profitable use; and
 - ii. The plight of the owner is due to unique circumstances not of the owner's own making, which unique circumstances must relate specifically to the land in question and not to general conditions in the neighborhood; and
 - iii. The use to be authorized by the variance will not alter the essential character of the locality of the land in question.
 2. In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance and punishable under Section 16 of this Ordinance.
 3. Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.
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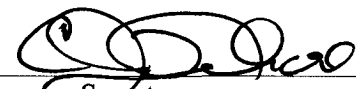
4. Under no circumstances shall the Board grant a variance unless and until the Board shall be satisfied that granting the variation will not:
- a. Merely serve as a convenience to the applicant and is not necessary to alleviate demonstrable hardship or difficulty so great as to warrant the variation.
 - b. Impair the general purpose and intent of the regulations and provisions contained in this Ordinance.
 - c. Impair an adequate supply of light and air to adjacent properties.
 - d. Increase the hazard from fire and other danger to said property.
 - e. Diminish the value of land and buildings in the County.
 - f. Increase the congestion and traffic hazards on public roads.
 - g. Otherwise impair the public health, safety and general welfare of this inhabitants of the County.
5. Every variance, exception or conditional use permit granted or denied by the Board shall be supported by testimony or evidence submitted in connection therewith.

After careful consideration of all the information that has been presented, and for the factual reasons set forth in the Zoning Administrator report and recommendation, which are incorporated by this reference herein, the Board of Adjustment hereby finds:

- i. Granting the variance will not harm the public interest;
- ii. The physical character of the property does not allow the applicant to develop or build in compliance with the zoning ordinance;
- iii. The applicant has presented evidence of unnecessary hardship due to unique property limitations of the parcel not of the applicants own making;
- iv. The Applicant has presented evidence that variance to be authorized will not alter the essential character or the locality of the land in question;

Therefore; The request of Gerald Smith for an area variance for the reduction of setback requirements is hereby ☒ approved ☐ denied


Vice Chair


Secretary

Original Filed with the Secretary of the Board of Adjustment on March 5, 2019.

MADISON COUNTY BOARD OF ADJUSTMENT

Application for Variance

DECISION

Gerald Smith
1705 W. Summit
Winterset, Iowa 50273
Date: 03-05-19

On March 5, 2019 at 7:00 p.m., pursuant to the rules of procedure of the Board of Adjustment, a public hearing was held and conducted on the Application for Variance filed by Gerald Smith on January 11, 2019 regarding the property locally known as 1705 W. Summit Winterset, Iowa. At the hearing the Board of Adjustment, reviewed the completed application form(s), relevant provisions of the Madison County Ordinances, all documents constituting the record from the Zoning Administrator, documents received from the Applicant, heard the statements, remarks and comments by the Zoning Administrator, the Applicant, Gerald Smith, as well as statements, remarks and comments by others in attendance. After all information had been received and all interest parties heard by the Board of Adjustment, the hearing was closed pursuant to the rules of procedure of the Board of Adjustment.

Following the close of the hearing a motion was made by Randy Gamble to approve the request for variance application Mindy Nelson seconded this motion. A roll call vote was conducted on the motion to approve the request for variance with the following votes:

	Yes	No	Absent
Mindy Nelson	☒	☐	☐
Randal Johnson	☒	☐	☐
Carrie Larson	☒	☐	☐
Mary Terry	☐	☐	☒
Randy Gamble	☒	☐	☐

A motion was then made by Mindy Nelson to approve as written the "Board of Adjustment Findings of Fact and Legal Principals Upon Which the Board Acts," which are attached hereto and incorporated herein by its reference. Randy Gamble seconded the motion and a roll call vote was conducted with the following votes:

	Yes	No	Absent
Mindy Nelson	☒	☐	☐
Randal Johnson	☒	☐	☐
Carrie Larson	☒	☐	☐
Mary Terry	☐	☐	☒
Randy Gamble	☒	☐	☐

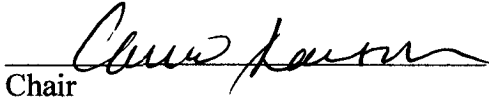
Accordingly, the "Board of Adjustment Findings of Fact and Legal Principals Upon Which the Board Acts" were approved as written and therefore adopted by the Board of Adjustment.

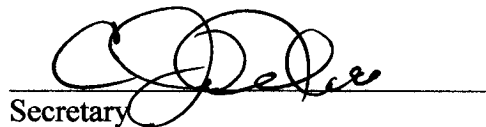
DECISION:

As the motion to approve the request for variance was approved, the variance request is approved.

Dated this 5th day of March 2019

Acknowledged as to Accuracy:

vice Chair 

Secretary 

Original Filed with the Secretary of the Board of Adjustment on March 5, 2019.

Written Notification of Decision sent to:

Gerald Smith
1705 W. Summit
Winterset Iowa 50273

Office of Zoning

C.J. Nicholl, Administrator

VARIANCE

PERMIT NO: 001-19

DATE: March 5, 2019

After a properly held Public Hearing on March 5, 2019, the Madison County Board of Adjustment hereby grants a variance to Gerald Smith to reduce the setback requirements of the property located at the following described real estate:

1705 Summit St W legal description - .98A IN SE SE SE Section 35 T76 R28 Douglas Township

This variance allows the setback to be reduced to 10 feet from the property line on the north and east lot lines of the above described property.

This variance was approved under the provisions specified in the Madison Zoning Ordinance for the Unincorporated Areas of Madison County, Iowa.



C.J. Nicholl, Secretary
Madison County
Board of Adjustment