



## *City Council Memorandum*

**To:** Mayor Fasbender & City Councilmembers  
**From:** Justin Fortney, City Planner  
**Date:** November 6, 2023  
**Item:** Variance #2023-37 – Front Setback – 1590 Highway 55 – Dakota County Government Center

### **Council Action Requested:**

Review and take action on the attached resolution approving the following variance request:

1. A variance to the requirement that ground-mounted accessory solar arrays may not be in the front yards of principal structures, as stipulated in Hastings City Code 155.07, Subd. K.3.d.(5)

This item was pulled from the October 16, 2023 agenda due to insufficient members present to vote.

A vote of 75% (6 of 7) of the entire City Council is required to affect any variation in the application of the zoning code.

### **Background Information:**

Accessory structures including ground-mounted accessory solar arrays may not be in the front yards of principal buildings. This is to assure they are accessory to the principal use and do not detract from the streetscape of the district. Staff and the Planning Commission found there are unique circumstances involving the subject land that make the proposed location appropriate. Alternate locations studied were problematic. Please see the attached October 9, 2023 Planning Commission staff report for additional information.

### **Financial Impact:**

N/A

### **Advisory Commission Discussion:**

The Planning Commission voted 5-0-1 (Mesina abstained) to recommend approval of the request at the October 9, 2023 meeting. This request was scheduled for City Council review on October 16, but there were not enough Councilmembers in attendance to vote on it.

### **Council Committee Discussion:**

N/A

### **Attachments:**

- Resolution for approval
- Planning Commission memo – October 9, 2023

**HASTINGS CITY COUNCIL**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HASTINGS  
SITTING AS THE BOARD OF ADJUSTMENT AND APPEALS APPROVING  
THE REQUEST OF DAKOTA COUNTY TO VARY FROM THE FRONT YARD  
SETBACK REQUIREMENT OF HASTINGS CITY CODE 155.07, SUBD.  
K.3.D.(5) AT 1590 HIGHWAY 55**

Council member \_\_\_\_\_ introduced the following Resolution and moved its adoption:

**WHEREAS**, McKinstry Essention LLC., agent for Dakota County, property owner, has petitioned for a variance from the entire front yard setback requirement of Hastings City Code 155.07, Subd. K.3.d.(5) to allow construction of a ground-mounted accessory solar array in the front yard on property generally located at 1590 Highway 55, legally described as SE 1/4 of NW 1/4, EX PARCEL 258F on MNDOT ROW Plat 19-88, of SECTION, 29 TWN 115, RANGE 17, Dakota County, Minnesota; and

**WHEREAS**, variances to the Hastings City Code may be considered by the Board of Zoning Adjustment and Appeals upon determination of supporting evidence as stipulated in Hastings City Code 30.02(F); and

**WHEREAS**, The City Council acts as the Board of Adjustment and Appeals in accordance with Hastings City Code 30.02(A), and

**WHEREAS**, on October 9, 2023, the Planning Commission of the City of Hastings serving in advisory to the Board of Zoning Adjustment and Appeals reviewed the petition as required by state law, city charter and city ordinance; and

**WHEREAS**, The Planning Commission voted to recommend approval of the petition consistent with findings of fact and conclusions included in this resolution; and

**WHEREAS**, The City Council sitting as the Board of Adjustment and Appeals has reviewed the petition and concurs with the recommendation of the Planning Commission.

**NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HASTINGS AS FOLLOWS:**

That the City Council hereby approves the variance request as presented based on the following findings of fact and conclusions:

1. Due to the unique nature of the site developing as a campus, the “front” is not physically identifiable in one specific location and there are conditions that would not allow the array in alternative locations including steep slopes, older building roofs, and other more visible front yards.
2. The conditions upon which the petition for a variance is based are unique to the subject property and not applicable to others in the same district. While there is a similar appearing campus at 1175 Nininger Road, the buildings in that location are on separate parcels, have more identifiable fronts, and are on level ground.
3. The goal for Dakota County is to become more sustainable by implementing renewable energy. Additionally, the project will create local jobs, have an economic impact, and create workforce development for Dakota County and surrounding communities.
4. Granting of the variance would only allow an accessory use that is in front of the building based on the address. The array will still be required to meet setbacks from adjacent properties and will be reviewed administratively for compliance with applicable codes. This will assure that the variance will not be detrimental to the public.
5. The proposed array is low to the ground (less than ten-feet tall) and over 150-feet from the nearest property. At that height and distance, it is not likely to cause any issues of concern.
6. The purpose and intent of the ordinance is to preserve the streetscape, setback, and aesthetics of structures along the right-of-way. Due to the location, grade, existing and proposed landscaping, the location will be in harmony with the purpose and intent of the ordinance.
7. The 2040 Comprehensive plan is supportive of solar energy and even suggests there may be reasons to exempt it from certain standards.
8. The construction of a solar array in the proposed low-lying and screened location is reasonable.
9. The practical difficulty is caused by the unique site not being adequately addressed by the ordinance regarding the location of a “front”.
10. Due to visibility concerns, steep slopes, and older building roofs, the proposal could not reasonably be accomplished under the ordinance requirements.
11. No change is expected to the character of the locality.
12. The applicant has not stated any financial reasoning for the variance.

Council member \_\_\_\_\_ moved a second to this resolution, and upon being put to a vote it was unanimously adopted by all Council members present.

Adopted by the Hastings City Council on November 6, 2023, by the following vote:

Ayes:

Nays:

Absent:

ATTEST:

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Mary Fasbender, Mayor

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Kelly Murtaugh (City Seal)

I HEREBY CERTIFY that the above is a true and correct copy of resolution presented to and adopted by the City of Hastings, County of Dakota, Minnesota, on the 6<sup>th</sup> day of November 2023, as disclosed by the records of the City of Hastings on file and of record in the office.

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Kelly Murtaugh, City Clerk

**(SEAL)**

This instrument drafted by:

City of Hastings (JJF)  
101 4th Street East  
Hastings, Minnesota 55033



## *Planning Commission Memorandum*

**To: Planning Commissioners**  
**From: Justin Fortney, City Planner**  
**Date: October 9, 2023**  
**Item: Variance #2023-37 – Front Setback – 1590 Highway 55 – Dakota County Government Center**

### **Planning Commission Action Requested**

Review and make a recommendation to the City Council on the following request:

- 1) A variance to the requirement that ground-mounted accessory solar arrays may not be in the front yards of principal structures, as stipulated in Hastings City Code 155.07, Subd. K.3.d.(5)

### **Background Information**

Ground-mounted accessory solar arrays, like all other accessory structures may not be in the front yard of principal buildings. This is to assure that principal buildings are the most visible. Principal buildings and uses are those that are allowed by zoning on their own, reviewed by the Planning Commission and City Council, and have a higher standard for architectural aesthetics. They should be the most visible features from the front. Accessory structures are typically reviewed administratively, have less architectural requirements and are not the type of uses one would expect to be in the zoning district on their own.

### **Subject Proposal**

The applicants propose to install an estimated 595kW ground mounted solar array in the open low lying area on the SE corner of the site. They believe the site is a good location because it is well screened, not anticipated for any uses in the foreseeable future, and not very visible. They have stated that other locations are not feasible. The age of the building roofs would not allow for rooftop installation. Other open space on the site is not suitable with steep slopes to the north of the proposed location and the SW corner of the campus is highly visible from the area streets, entrances, and more identifiable as the front. Carport arrays come with drawbacks and would provide substantially less energy than the proposal, based on the parking lot configuration and allowable area.

The subject property is unique since it is very large and laid out as a campus. Addressed from Highway 55 but with two major entrances on General Sieben Drive along with a few accessing 4<sup>th</sup> Street West and North Frontage Road. The proposed location for the array is about 150-feet away from the closest principal building. There is also a large elevation differential between the campus buildings and the proposed solar array location. These unique conditions differentiate the property from others that have one visually identifiable front yard. The proposed location of the solar array is very low and far from the principal buildings. It is also well screened and in a location with little development potential.

### **Public Notification**

Notification of the variance request was sent to property owners within 350-feet of the property. Staff has not received any comments.

### **VARIANCE REVIEW**

#### **Variance Definition**

Variances are deviations from strict compliance of City Code provisions. The Board of Adjustment and Appeals may issue a variance upon determination of findings of fact and conclusions supporting the variance as established in Chapter 30.02, Subd. F of the City Code. The Planning Commission (acting in part as the Board of Adjustment and Appeals) may consider variances to the Zoning Code that are not contrary to the public interest where owing to special conditions, and where a literal enforcement of the provision of the City Code would result in practical difficulties. Variances may be granted providing the following has been satisfied (staff review appears in ***bold italics***):

(1) Because of the particular physical surroundings, shape or topographic conditions of the land involved, a practical difficulty to the owner would result, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out; ***Due to the unique nature of the site developing as a campus, the "front" is not physically identifiable in one specific location and there are conditions that would not allow the array in alternative locations including steep slopes, older building roofs, and also being in the in a defined, but more visible "front"***.

(2) The conditions upon which the petition for a variance is based are unique to the tract of land for which the variance is sought and not applicable, generally, to other property with the same zoning classification; ***The conditions upon which the petition for a variance is based are unique to the subject property. While the hospital, specialty clinic, and senior living on Nininger Road have some similarities, those buildings are on separate parcels, have more identifiable fronts, and are on level ground.***

(3) The purpose of the variance is not based exclusively upon a desire to increase the value or income potential of the parcel of land; ***The goal for Dakota County is to become more sustainable by implementing renewable energy. Additionally, the***

***project will create local jobs, have an economic impact, and create workforce development for Dakota County and surrounding communities.***

(4) The granting of the variance will not be detrimental to the public welfare or injurious to other land or improvements in the vicinity in which the tract of land is located; ***Granting of the variance would only allow an accessory use that is in front of the building based on the address. The array will still be required to meet setbacks from adjacent properties and will be reviewed administratively for compliance with applicable codes.***

(5) The proposed variance will not impair an adequate supply of light and air to property, or substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety or substantially diminish or impair property values within the vicinity; ***The proposed array is low to the ground (< 10-feet tall) and over 150-feet from the nearest property. At that height and distance, it is not likely to cause any issues of concern.***

(6) The variance is in harmony with the purposes and intent of ordinance; ***The purpose and intent of the ordinance is to preserve the streetscape, setback, and aesthetics of structures along the right-of-way. Due to the location, grade, existing and proposed landscaping, the location will be in harmony with the purpose and intent of the ordinance.***

(7) The variance is consistent with the comprehensive plan; ***The 2040 Comprehensive plan is supportive of solar energy and even suggests there may be reasons to exempt it from certain standards.***

(8) The proposal puts the property to use in a reasonable manner; ***The construction of a solar array in the proposed low-lying and screened location is reasonable.***

(9) There are practical difficulties in complying with the official control. "Practical difficulties", as used in connection with the granting of the variance means that:

(a) The property owner proposes to use the property in a reasonable manner not permitted by an official control; ***The use is reasonable, as explained in number 8.***

(b) The practical difficulty is caused by the provisions of this chapter and has not been created by any persons presently or formerly having an interest in the parcel of land; ***The practical difficulty is caused by the unique site not being adequately addressed by the ordinance regarding the location of a "front".***

1. A practical difficulty is not present if the proposal could be reasonably accomplished under the current Ordinance requirements. ***Due to visibility concerns, steep slopes, and older building roofs, the proposal could not reasonably be accomplished under the ordinance requirements.***

(c) The variance, if granted, will not alter the essential character of the locality. ***Due to the passive nature of the array and its screened location, no change is expected to the character of the locality.***

(d) Economic considerations alone do not constitute practical difficulties. ***The applicant has not stated any financial reasoning for the variance.***

(e) Practical difficulties include inadequate access to direct sunlight for solar energy systems.

### **RECOMMENDATION**

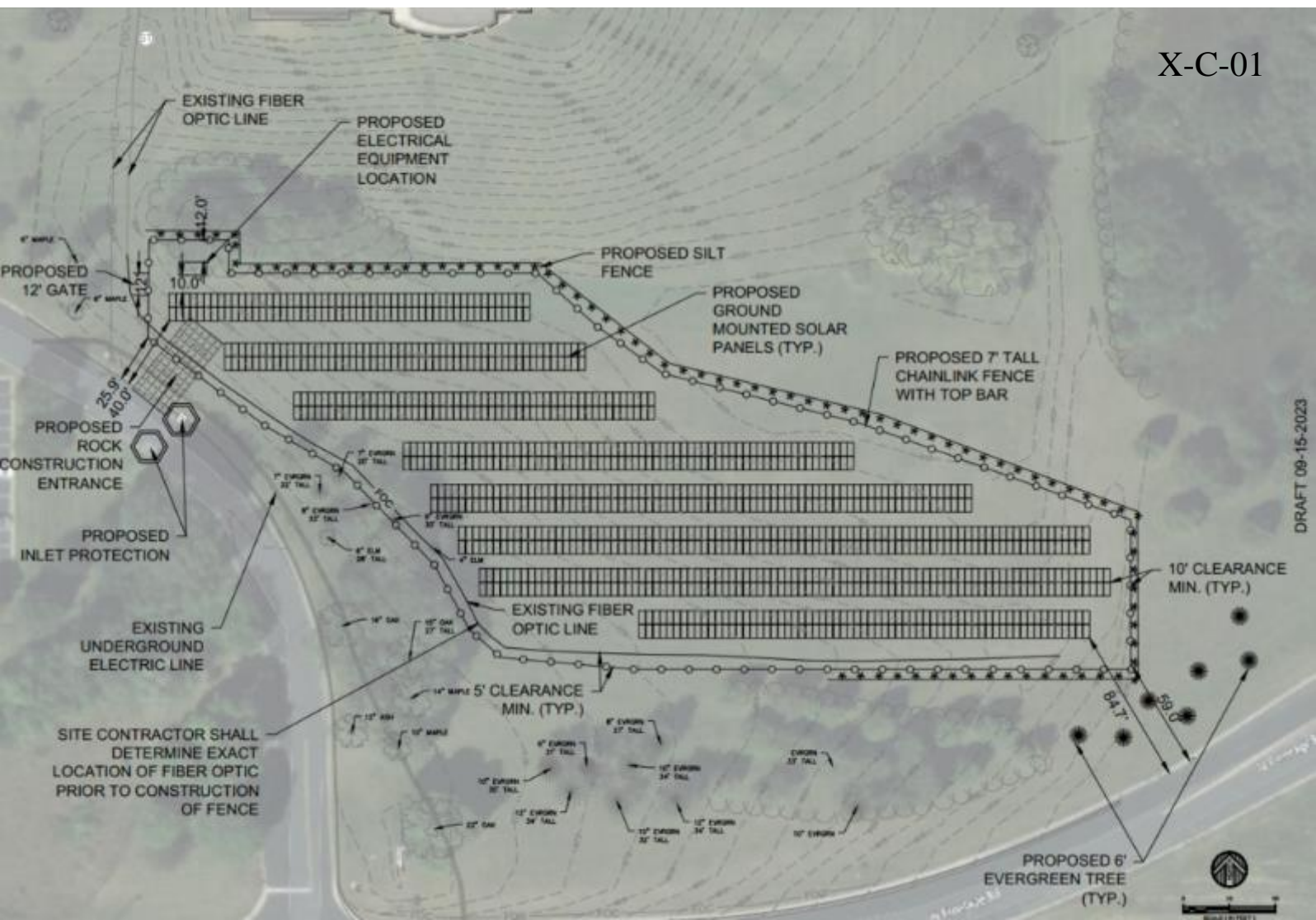
Granting of the variance is recommended based on the above findings of fact in the Variance Review.

### **ATTACHMENTS**

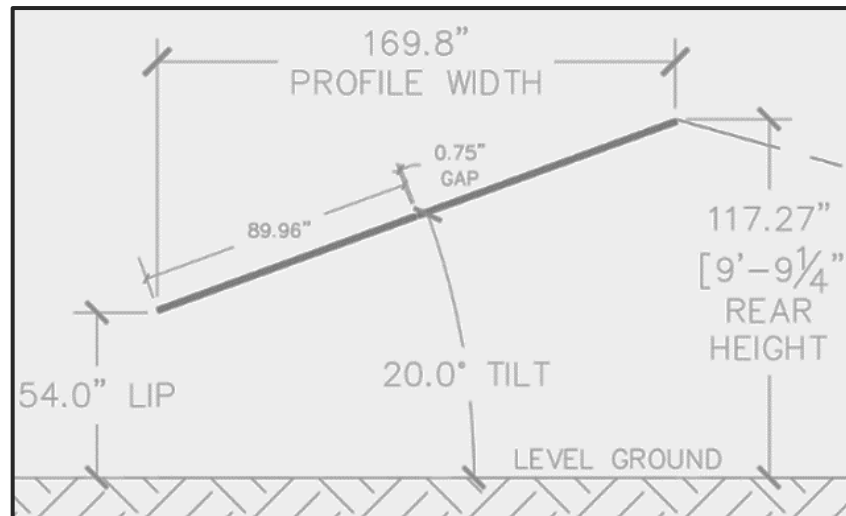
- Aerial Map
- Plans and diagrams
- Photographs





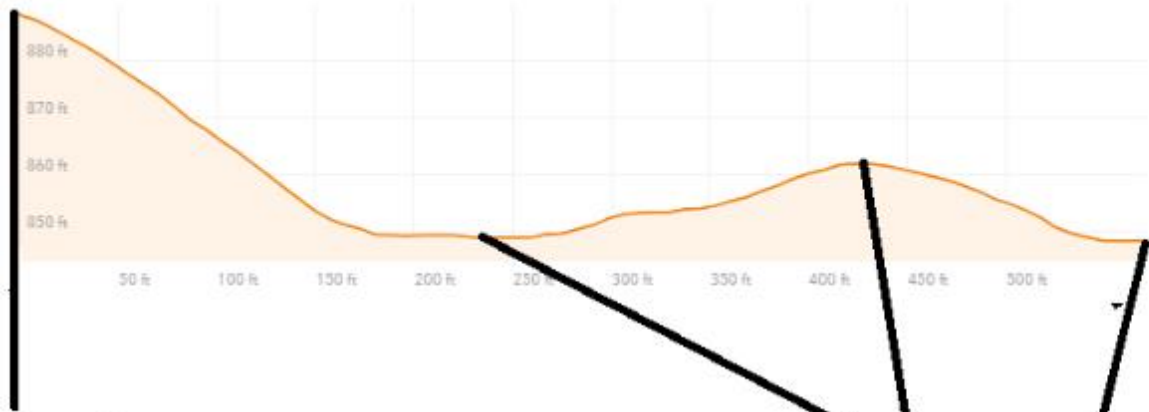


Ground Mount Racking System





**Elevation Profile**



**Approximate ground elevation of closest building**

**Approximate array ground elevation**

**North Frontage Road**

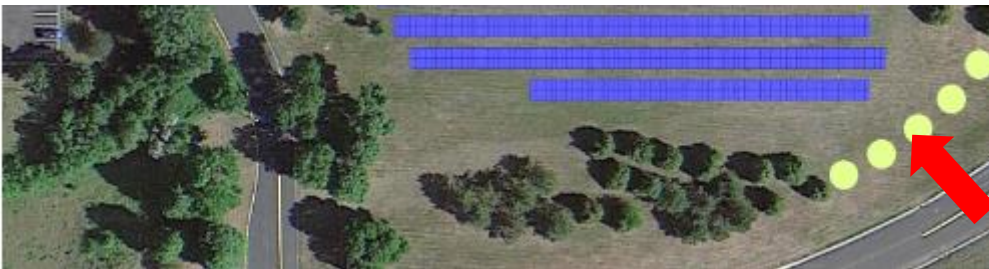


**A**

X-C-01



**B**



**View A**

**View B**