

**BOONE COUNTY BOARD OF ADJUSTMENT**  
**BOONE COUNTY GOVERNMENT CENTER**  
**801 E. WALNUT ST., COLUMBIA, MO.**  
Thursday, June 27, 2002

Chairperson Rootes called the meeting to order at 7:00 p.m. in the Boone County Commission Chambers having a quorum present.

Chairperson Rootes read the procedural statement stating that this Board is appointed by the Boone County Commission to consider specific application of the zoning and subdivision regulations. The Board is empowered to enter rulings that may give relief to a property owner from the specific application of the Zoning and Subdivision regulations. Generally, variances can only be granted in situations where by reason of shape, topography or other extraordinary or exceptional situation or condition of a specific ordinance would result in peculiar and exceptional difficulties to or exceptional and demonstrable undue hardship upon the owner of the property as an unreasonable deprivation of use as relating to the property. A variance from the strict application of this ordinance can be granted provided the relief requested will not substantially impair the intent, purpose and integrity of the zoning regulations.

Notice of this meeting has been published in accordance with our by-laws for the proper number of days. All decisions of the Board are based on the zoning or subdivision regulations for Boone County, Missouri, and they are hereby made a part of the record of this meeting.

This Board is comprised of five members, with three members constituting a quorum. An applicant must receive at least three votes in order to receive the relief that they have requested from the Board. Any applicant appearing before this Board has the right to be heard by all five members. At times that all five members are not present, the applicant, and only the applicant, may choose to wait until such time as all five members are present to hear their request.

Roll call was taken:

Present: Linda Rootes, Chairperson  
Cindy Bowne  
Tom Trabue

Absent: Larry Bossaller, Vice-Chairperson  
Kay Clementz

Also present: Thad Yonke, Staff                      Bill Florea, Staff  
Paula Evans, Secretary

Minutes of May 23, 2002 meeting were approved with no corrections.

## REQUEST

4. Case # 2002-007

Request by Darren and Sandra Freese to allow a tier lot having a stem in excess of 59' in width on property located at 1975 W. Dripping Springs Rd., Columbia (Subdivision Regulations, Appendix B, Section 1.8.1)

Planner, Bill Florea gave the staff report stating that section 1.9.2 of the subdivision regulations requires that the Director make a recommendation on requests for variance from the provisions of the regulations. The Board may grant a variance only if it finds after public hearing and upon competent and substantial evidence that the applicant meets the criteria for grant of a variance required by these regulations. No variance from any requirement contained within appendix A or B of these regulations shall be granted unless the Board finds: (a) the applicant will incur unreasonable and unnecessary hardship if a variance is not granted and the variance is not sought primarily to avoid financial expense in complying with the requirements of these regulations (b) grant of a variance will not endanger the health, safety or welfare of the public, and (c) ~~grant of a variance will not hinder, thwart or circumvent the general intent~~ or any specific purpose of these regulations. All applications for variances shall be filed with the Director and after review thereof the Director shall make a recommendation to the Board to grant or deny the application and state the reasons for his recommendation.

This tract of land was created by being excluded from survey work done in 1995 prior to the subdivision regulations being revised. ~~Ostensibly, this is supposed to be a 5.0-acre tract, but the calculated acreage is 4.9 acres.~~ The applicants purchased the property from Missouri Cattle Breeders, Inc. in May 2002. Missouri Cattle Breeders, Inc. owns an additional 5-acre tract to the north of the subject property. That tract was illegally divided into 3 tracts in September 2001. The division of the tract owned by Missouri Cattle Breeders constitutes three violations of the subdivision regulations and one violation of the zoning regulations.

The applicant want to purchase the south 3.19 acres of the illegally divided tract and combine it with their 5-acres. In order to accomplish this they must plat the entire 8.19 acres. Part of the remainder from that tract will be combined with a third 5.0-acre tract. The third portion of the tract, a 15' wide by 585' long strip, has been conveyed by deed to an adjoining property owner. Missouri Cattle Breeders, Inc. has been given 30-days notice to correct the above noted violations.

While it is questionable whether a legal lot can be created by exclusion, the applicants must comply with the subdivision regulations when combining the existing tract with additional land. The original tract that appears to have been created through exclusion includes an area that is 134' wide width. This is the section that provides access to Dripping Springs Road. Under the subdivision regulations, this is a stem that creates a tier lot. Appendix A, Section 1.8.1 states that a stem for a tier lot shall not be less than 20 feet or more than 59 feet in width. The stem on this tract is 75' wider than permitted by the regulations.

The land was purchased from Missouri Cattle Breeders, Inc. Missouri Cattle Breeders Inc. also owns the tract to the west.

- a) The applicant will not incur unreasonable and unnecessary hardship if this variance is not granted. They are able to reduce the width of the front of the lot by working with the seller to include a portion of the lot to the west in the platting process. The lots can be designed to comply with the subdivision regulations. Additionally, the lot that is the subject of this request can have a building permit issued for a house as it is, so there is no loss of use to the property.
- b) Granting this variance will not endanger the health, safety or welfare of the public.

- c) Granting this variance will thwart or circumvent the general intent of the regulations. The original lot was created just before the subdivision regulations were revised in 1995. A number of lots were created by legal description or survey, with other parcels created by exclusion. The County has recognized those lots as having been legally created, and has issued building permits when appropriate. However, the County has required that changes to such lots must comply with the current subdivision regulations, and the staff sees no difference here. This request does not fulfill criteria A or C.

Staff recommends that this variance be denied.

Present: Steve Heying, surveyor, 1202 Madison St., Columbia  
Darren Freese, owner, 1804 Muirfield Dr., Columbia

Mr. Heying stated that when he filled out the application for Mr. Freese, Mr. Heying filled it out with the fact that the applicants were asking for a minimum lot width at 50-feet from Highway VV to be less than 150-feet. Not for a stem lot to be wider than 59-feet. It seems to be a little like apples and oranges. The front portion of this lot will not be built on; in that case it would be a stem lot. On the other hand, the understanding is that 134-width falls in the in between area. It was asked to leave that front building line off of it at the road, staff said that they view that building lines are 150-foot from the access to the public right of way. This is a situation that has come from a pre-existing, previous to the current subdivision regulations and with the grant of this waiver, applicants are not asking to create any more number of lots. Applicants are trying to get things arranged to create two bigger lots. It was also stated that the lot that Mr. Freese owns is less than 5 acres. Mr. Heying stated that he did the math on it and came up with 5.16 acres, so the lot is over 5 acres. The lot to the north that was originally created was over 5 acres too, but due to a water line situation, the usefulness of that 5 acres is not going to be prudent. So applicants were going to create a 9 to 10 acre lot north of that using the rest of the 5-acre lot in that case make two bigger lots where two five acre lots were and not create any new lots.

Mr. Heying stated that the deeds to the surrounding lots are owned in Mr. Phil Blom's name as Phil Blom, not as Missouri Cattle Breeders, which is Mr. Blom's corporation.

Chairperson Rootes asked Mr. Heying to go over the first part again about the controversy over what it is that the applicants thought they applied for.

Mr. Heying stated that he was reading right off the application the minimum lot width at 50-feet from Route VV, Dripping Springs Road, to be less than 150-feet. It is at 134-1/2 feet but not to be considered a tier lot as per 33 and 34 of the Boone County subdivision regulations 1.8.1.

Chairperson Rootes stated that applicants are going back 50-feet from the right of way.

Mr. Heying stated from the right of way of Highway VV. At that distance back from Highway VV, that width parallel to VV is 134-1/2 feet. Applicants are looking at a waiver from the condition of the new subdivision regulations that is necessary because it brings on hardship from the difference of the old subdivision regulations and the new one. It creates undue hardship by the fact that the lots that were laid out prior to these current subdivision regulations can't be used at the size or bigger and at the same number of lots as it was designed at prior to June 1995.

Chairperson Rootes asked staff to comment on the perceived difference.

Mr. Florea stated that he didn't know how to comment on it. It is different ways of saying the same thing. Mr. Florea stated that he did not know if it was possible to get a variance from calling this a tier lot. It is a

tier lot. Staff would oppose; however you want to describe the variance staff opposes it. It achieves the same thing. We have a tier lot and the County has standards for tier lots as well as minimum width standards for lots.

Mr. Heying stated that if this were a tier lot, on a tier lot, there would be no building line at 50-feet from Highway VV. In essence, if we do away with the building line 50-feet from Highway VV that is 134-feet long instead of 134-feet we wouldn't be having this discussion. Mr. Freese can state to the fact that he doesn't need that building line along Highway VV. The only piece of land that is not in the strip that is in the road is in the hollow and the applicant can't do anything with that anyway so Mr. Freese will build behind the building line along the access that is also shown on the plat that was submitted for the June Planning and Zoning meeting.

Open to public hearing.

Present speaking in favor of the request:

Greg Fritts, 1306 Seattle Slew, Columbia.

Mr. Fritts stated that he owns the property directly to the west of the property in question.

Member Bowne asked if that is the lot with the pond.

Mr. Fritts stated no; the lot with the pond on it is to the south.

Member Bowne asked if Mr. Fritts had a little old pond.

Mr. Fritts stated yes. Mr. Fritts stated that his opinion is that the applicants are taking two lots and making one lot out of it. The perception of the tier lot is a very small thin strip that is really not large enough to do anything on. It is associated with the private road that Mr. Blom had constructed to access the property that Mr. Fritts is building on now. A couple of things might have happened that decreased the size of the lot in question. The first and most important thing was that there was a strip of land on the north side of the Freese's lot that was provided to Mr. Fritts' son by Mr. Blom as a location to put his water meter. The water district out there wants everyone's water meter to be on their own property. Otherwise there would have been an inordinate expense to place a waterline in a different direction which would have required boring the highway and inserting a steel sleeve then inserting a 6-inch water main in there that would only be serving two lots.

Member Trabue asked Mr. Heying if that was the 15-foot strip that is across the middle of the lot on the plat.

Mr. Heying stated yes.

Mr. Fritts stated that is the strip that is in question. Another thing happened that probably decreased the size of the property. Mr. Fritts stated that when he and his wife were in the process of buying their lot from Mr. Blom, Mr. Blom thought that when the property was surveyed according to the meets and bounds that Mr. Fritts' lot would come over to the road that was already constructed, it didn't. Mr. Blom agreed to give Mr. Fritts another 1-1/2 acres so that they could have access to the road. If Mr. Fritts didn't have that, he couldn't have gotten to the lot he wanted to build on. If Mr. Blom had built his road where that spot was, there would not have been a reasonable place for a road. It went through the small pond that Member Bowne mentioned. That decreased the size of that lot substantially also.

Mr. Fritts stated that his son-in-law is in the process of buying a house from The Hord's on the corner. Mr. Fritts stated that he is in support of this variance. It can only make things better if you take smaller lots and make a large one. Mr. Fritts stated that he has already built a nice home out there and so has his son so Mr. Fritts sees no reason not to grant this variance even though it is outside today's rules. Mr. Blom did this prior to the rules. It could be questionable that Mr. Blom circumvented the rules, he may have and he may not have, legally this is a legal lot. Mr. Fritts stated that he didn't want to see anything happen that would destroy the ability for someone else to put a nice home out there because sometime in the future, someone could do something out there that is substandard.

Phil Blom, 2273 Dripping Springs Rd, Columbia.

Mr. Blom stated that this was his old property, not his company's, it is the first farm Mr. Blom bought in Boone County in 1979. Since then Mr. Blom has bought 300 to 400 acres and developed it in 5 or 10 acre lots and abided by all the Boone County Planning and Zoning regulations. Mr. Blom stated that he has been developing like that for the past four or five years and never had any problems. Mr. Bormann, the surveyor that did this farm mentioned the ruling that was going to change, Mr. Bormann had stated that he could go ahead and break these lots up. Mr. Blom stated that he relied on Mr. Bormann's integrity and professionalism to make these lots correct. Mr. Blom stated that Mr. Bormann assured him that they were correct and Mr. Blom paid for the work. What is happening with P and Z is nothing that Mr. Blom has done, Mr. Blom stated that he thought he did it right when he paid someone to do it right.

Mr. Blom stated that he understands that things change and there should be some exceptions to the rule when things were grandfathered in. Mr. Blom stated that he doesn't know how this could be changed differently and throw all the other lots off. Mr. Blom stated that he wanted to make it clear to the Board that he hasn't done anything, these things happened because of the surveyor, Mr. Blom stated he thought the surveyor was doing his job correctly.

Mr. Blom stated in regard to the waterline, there is a miscommunication within the system that everyone is doing their own thing because the water district confused issues on things when Mr. Blom put this property together. Mr. Blom stated he went by what the water district told him to do, then the water district had a policy change. Mr. Blom stated he locked the land and got it platted, then things changed. Mr. Blom stated that he is trying to provide a good service to the people that are buying his lots.

Chairperson Rootes stated that she would appreciate if someone came up and pointed out on the plat where everyone's property lays.

Mr. Freese, Mr. Fritts, and Mr. Blom approached the Board and pointed out the locations of different properties, the stem, waterline, and road.

Mr. Florea also approached the Board and pointed out the location of a deed line and pointed out the lot that was split illegally when it was transfer occurred.

Mr. Fritts stated that in using the word "illegally" that is just because it doesn't meet today's requirements. The alternative to doing that would have been inordinately expensive.

Member Trabue stated that the term illegally is a very strong term. Mr. Florea is correct, it is an illegal transfer. Member Trabue stated that he didn't believe that staff was trying to use it that strongly.

Mr. Fritts stated that a violation of the rules is probably a better term.

Member Trabue asked which lot was created by exclusion.

Chairperson Rootes asked what created by exclusion meant.

Member Trabue stated that the developer surveyed a part and left the other part.

Chairperson Rootes asked staff if Mr. Freese sold a lot to go with another, would there still be a stem.

Mr. Florea stated that the applicant would still have a stem, but it would comply because he could reduce the width of the stem to less than 59-feet. There are a number of ways the applicants could work within the regulations to solve the problem. The alternative would be for Mr. Blom to sell Mr. Freese a portion of about 16-feet wide that would increase the size.

Mr. Blom stated that this would be changing the lots again.

Mr. Florea stated that all he is trying to say is that there are alternatives to fixing the problem within the regulations.

Member Bowne asked if the lot was platted.

Mr. Florea stated no. It was not legally platted, but it is a legal lot of record. It enjoys any use that any other 5-acre lot in the A-2 district enjoys. It is a legal lot, you can build on it and use it like anyone else could but it hasn't been platted, meaning it hasn't been formally surveyed and platted.

Mr. Fritts stated to Mr. Blom that if the small portion could be deeded over to another, the legal question of the stem would go away.

Mr. Florea stated that is correct. It has to either go smaller or larger.

Mr. Fritts stated that it would make one lot larger and Mr. Freese's lot smaller.

Mr. Florea stated that Mr. Freese was going to buy the property anyway, if it is not usable then it is no loss to Mr. Freese.

Mr. Blom stated that this would be making changes. What the surveyor did should have been right.

Mr. Florea stated it was done correctly, the regulations at the time were met.

Mr. Heying stated that this is a legal lot of record, if we start taking parts of it off the applicants have to come before the Planning and Zoning Commission and plat it.

Mr. Florea stated that is true.

Mr. Heying stated it is nothing more than narrowing or widening this up.

Mr. Blom stated that when he does these lots, he tries to make them simple and easy for everyone. Every time we start doing all these other things, you start adding cost.

Mr. Freese stated that he has already bought this lot, if you start taking some of the property away, then Mr. Blom and Mr. Freese have to start negotiating.

Mr. Blom stated that if applicants have to go through all of this, then he won't be able to get a building permit and he is ready to start building his house now.

Mr. Florea stated that applicant can get a building permit now or during the platting process, the building permit won't effect that.

Mr. Yonke stated that for point of clarification an illegal transfer, a violation of either the subdivision regulations or zoning ordinance is a criminal misdemeanor offence. It is illegal in all the senses of the word illegal. Whether it was intended to be dishonest is a different situation, but in terms of the law, it is illegal.

Mr. Fritts stated that if anything illegal happens then Mr. Blom would go to jail.

Mr. Yonke stated this is punishable by 1 year in jail or \$1000 fine. Rather than prosecute, staff typically tries to have people fix the problem within the regulations.

Present speaking in opposition to the request:

Patti Brown, 2281 N. Dripping Springs Road, Columbia.

Ms. Brown is not in opposition to the request but only has a question for the Board.

Ms. Brown asked that to create two larger lots by doing this piece, does that change the way that things can be built on these lots. Ms. Brown stated that her understanding is that there can only be one house put on a five acre lot in the area, what happens if it is a six or seven acre lot, does that change?

Mr. Florea stated that it doesn't change. It still only qualifies for one dwelling.

Chairperson Rootes stated that it could effect the site placement of the home.

Mr. Florea stated yes, the location of the home on the lot could change.

Member Trabue stated that he believed within the regulations the applicants could come in and plat that as 2 ½ acre lots, but it doesn't have public road access so that would probably not be approved.

Mr. Florea stated that is correct.

Member Bowne stated they don't all have to be platted at five acres.

Mr. Florea stated the minimum size is 2 ½ acres. Any lot less than five acres has to have direct frontage on a public road, that is the bar to dividing any of those tracts.

Ms. Brown asked what if someone else came along and said they needed that strip to make it happen.

Member Trabue stated that as an adjoining property owner, Ms. Brown would receive notice of the Planning and Zoning Commission hearing and Ms. Brown would have an opportunity to speak for or against it.

Chairperson Rootes asked staff to comment on the road and asked if this is a private road.

Mr. Florea stated that it is a private drive.

Chairperson Rootes stated it is a drive that serves more than one residence, how is that described.

Mr. Florea stated he is not sure how many residences it serves.

Mr. Fritts stated that it is just like any other private road. The downside to having a private road is that the owners have to maintain it.

Member Bowne asked Mr. Freese if there was any reason he did not want trade what is to the west side of the drive for part of the land to the north.

Mr. Freese stated that he has already paid for the land.

Member Bowne stated that applicant has intentions of buying the land to the north.

Mr. Freese stated yes.

Member Bowne asked Mr. Freese if he was in love with the land to the west, because it doesn't serve anything.

Mr. Freese stated that if that were cut up, it would change how much he pays for the land. If the property to the west of the drive has to be adjusted, that is just another thing that he and Mr. Blom has to talk about plus getting it surveyed. ~~There is nothing that can be done with that property other than mowing~~ part of it. The way the drive goes in there is a ridge, the road curves and goes up through there, the part to the west of that drive is a dip. Mr. Freese stated he is not in love with that part of the land, but doesn't see any reason to go through all the trouble to change it since it was drawn up that way, when it was drawn up, it was legal.

Member Bowne stated that the reason is because the applicant wants to make an additional purchase. By making the additional purpose, it no longer meets the subdivision regulations. The reason for that is to make it possible to buy that land to the north and plat it all together to give up what is on the west side of that driveway in order to get land that is more valuable. Mr. Blom wants to sell that land to the north because he can't do anything else with that particular piece of land and selling it to the applicant is to Mr. Blom's advantage. If it is Mr. Blom's advantage to sell the property to the north and it is to applicants advantage to get rid of some of the property on the west side of the road, it seems that they need to be working out a deal and if it has to be resurveyed, it has to be resurveyed.

Mr. Freese stated that he didn't realize that the 3.1 acres to the north was part of this discussion.

Member Bowne stated that is ultimately that is the applicant's goal. Applicant wants to buy that piece. To buy it, applicant has to replat it in to one big lot instead of having one five acre lot and one three acre lot, applicant has to make it in to an 8-acre lot. Applicant can't do that because it is either too wide or too narrow. That is worked out by getting rid of part of the property that is on the west side of the driveway that doesn't suit applicant anyway. If that is not something that applicant doesn't want to do then the applicant is stuck with a five-acre lot and Mr. Blom is stuck with a three-acre lot and we are at an impasse here.

Mr. Freese stated that the applicants are not here to make it difficult, the way it is drawn up, obviously Mr. Freese wants the 3.1 acres to the north of the lot he currently owns. Mr. Freese stated that he doesn't see why the applicants need to change the stem portion of the lot. If the Board decides that this is something the applicants need to do then they will do it.

Member Bowne stated that in reading part C of the conditions, it stated that the Board could not make a ruling that circumvents what was written up. Why the subdivision law was written that way is unknown. Member Bowne stated that all she can look at is what is before her and it says that this is the way the subdivision regulations were written. Member Bowne stated that she would have to have a very good reason to change it. Because Mr. Blom still owns the land to the west and the land to the north, Member Bowne stated she doesn't see a reason to make an exception. All it does is open it up down the road to someone else who wants to come in who may not have as great an idea.

Chairperson Rootes asked how much money we are talking about for a survey, is there a ballpark figure.

Mr. Heying stated \$1100 to \$1500. It is not a survey it is a plat. The undue hardship is that the applicants will have to change all the lot lines in the area for nothing more than the fact that the rules have changed. The undue hardship is that the lines that were put in during 1995.

Chairperson Rootes asked if Mr. Freese would have to go through the Planning and Zoning Commission to get these two pieces put together.

Mr. Florea stated that the plat that the Board has was submitted for last months Planning and Zoning Commission agenda. Because of this stem issue, it couldn't go forward. If the Board grants the variance tonight, it still has to go to the Planning and Zoning Commission. If the Board does not grant the variance, it would have to go to the Planning and Zoning Commission with a compliant stem. That is the only difference. Mr. Florea stated that financial consideration is not a reason to grant a variance. Moving lot lines is not difficult to do; it is a financial burden.

Chairperson Rootes asked if the applicants could go to the Planning and Zoning Commission under one case and have both things addressed.

Mr. Florea stated that the applicants are already doing that. That plat is signed by both Mr. Blom and Mr. Freese.

Chairperson Rootes stated that it would not really be more complication or expense for that standpoint.

Mr. Florea stated not from a regulatory point of view.

Chairperson Rootes stated that there would just be a little extra surveying.

Mr. Florea stated that is correct.

Chairperson Rootes stated that there would be no extra procedures or advertising or meetings to go to.

Mr. Florea stated no, as long as they follow the regulations.

Member Trabue stated that he believes that the tier lot portion of the regulations was built in for when we are creating new situations. In this situation, this particular stem or tier, was created in 1995, it is there. Applicants are not creating a new one because of this plat. It is getting caught because of the regulations. Member Trabue stated that he understands that anything that happens to a piece of property from any regulation change forward has to comply, but we are here as the Board of Adjustment to look at those and make reasonable rulings and variances to this hard and fast regulation. The reason that the applicants are having to come before the Board at all to plat this is two-fold; one is because Mr. Freese would like to buy that additional three acres. The lot that was illegally divided in to three lots has to be cleared up. This plat

provides and opportunity to do that and make it compliant with the exception of that lot being a non-compliant lot.

Mr. Yonke stated that the issue would still have to be resolved separately.

Member Trabue stated that whoever did that particular piece of dirty work should be slapped on the hand. Because it is obviously the wrong thing to do. That is between the water district and the County and surveyors. Member Trabue stated that this plat cleans up a lot of issues, the regulations apply directly. But that is why there is a Board of Adjustment, while it is possible, reasonably easy within the regulations to move the lot lines around and make it compliant, it doesn't make the stem any better or worse to just magically be 59-foot. The lot lines out there are reasonably clean at this point and now we are going to put the awful jog in it, it is "criminal" just so we can comply with these regulations. Member Trabue stated that he didn't believe that this is why the stem regulation was put in the regulations.

Member Trabue stated that he doesn't like stem lots. They shouldn't be allowed, period, as part of the regulations, they should be a variance in all cases.

Mr. Blom stated that the water district causes a lot of these stems to happen.

Member Trabue stated he knows that. He is very supportive of the regulations, that is one of the reasons Member Trabue serves on the Board. Member Trabue stated that he recognizes that they are not perfect for every situation. Variations are applicable. This is not about a financial hardship to anyone. The money that the applicants are talking about is nothing compared to what they are doing out there.

Chairperson Rootes stated that she has a concern about the private drive. All the people who are buying property there are in agreement, they are cooperative. It is reasonable sometime down the road with the level of development that is going on out there, those properties are going to change hands over time and there will be conflict over the road. Someday that road will be a public road, or have some other kind of arrangement. It is not good to have a little piece of someone's lot on the other side of the road. It would be much better to resolve that now even if it leaves a crooked lot line than to have to face the problems in the future when people might not be agreeable.

Member Trabue asked the staff what the rule was on private roads.

Mr. Florea stated that they are allowed in administrative surveys up to four lots can use the same private drive. In plats where all lots are greater than five acres up to four such lots can use the same private drive.

Chairperson Rootes asked how many lots we are talking about now.

Mr. Florea stated that he believed Mr. Blom said there would be a maximum of four lots.

Mr. Heying stated that this will not be a public road, it dead-ends in to a creek.

Chairperson Rootes stated that this includes Mr. Freese's lot already.

Mr. Heying stated that the private road has some curves that will not allow it to become a public road. It is not possible for it to become a public road. There are requirements for site distances.

Member Trabue stated he believed that it would be difficult to turn this in to a public road.

Member Trabue stated that the only criteria he had a problem with was item A.

Chairperson Rootes stated that it may not be an unreasonable hardship but it may be an unnecessary hardship.

Member Bowne stated that she sees alternative solutions to the variance, the precedent is there that says we don't grant variances to circumvent the requirements. Member Bowne stated that she wasn't there when they set up the width requirement and doesn't know why they did it. Member Bowne stated that all she can look at it is that this is the rule we have to go by.

Mr. Heying stated that if we narrow that up, that is going to change the lot to the west and the line to the west was decided upon topography. That is why it is not already 150-feet. To take a portion of the other lot, that lot can't be platted because it is non-conforming, it is 2-acres and it requires 2 ½ acres. In order to make this wider, he can only move to the west, that would make that lot less than 5-acres. To go narrower would cause a non-topographical situation that would be a detriment; the line is located at that location due to topographical requirements. It is not that easy to make it 150-feet wide which would make the lot to the west less than five acres, or make it 59-feet wide which moves the line to the west in an unsuitable location for future maintenance by both parties.

Chairperson Rootes asked if where the line is now would be a suitable location for a fence.

Mr. Heying stated yes.

Chairperson Rootes stated that if it were moved over by the roadway, the applicants would not be able to fence the property.

Mr. Florea stated that someone had stated that the road easement follows the ridge.

Mr. Heying stated yes, you would be on the downside of that ridge if you moved it off to the east.

Mr. Fritts stated that it would actually be on the down slope if you moved it to the west. Where the road is built is the only practical place to build a road.

Mr. Florea stated that if the applicants were to fence, to fence along the road easement would be the logical place to fence. If it is suitable to build a road, then it is also suitable to build a fence.

Mr. Fritts stated only if you want your fence that close to the road.

Member Trabue stated that the only way that you could move it based upon what Mr. Heying is stating is to move the lot line to the east to make it narrower.

Mr. Fritts stated that you can't move the lot line to the east.

Member Bowne stated that he didn't see that the applicants are losing any use of the property. Mr. Freese already stated that it is no mans land there. If the applicants are going to build a fence, Mr. Freese is not going to be running cattle or horses on that side of it because there is a road that goes through there. If the property to the west sells to someone who wants to run livestock, then they are going to build a fence where it is logical to build a fence and it may or may not be a property line fence, it may be a pasture fence. Fencing is not an issue here. The issue is: how can we make it work in order to make lots that the applicants can use. Member Bowne stated that she sees shrinking up the stem in order to be able to go to

the north. If applicant doesn't want to shrink up the stem, don't buy to the north. No one says we have to sell these lots and no one says we have to divide these things up. Applicant can leave the two to the west in one big lot and make it smaller if you want to go west and instead of having two lots, have one lot. There are many options here. It is not what applicant wants to do but there are other options, the applicant's hands are not tied at this point. Now is the time to get it straightened out, but right now the applicants hands are not tied. If applicant's hands were tied, then Member Bowne may look at it as a hardship.

Mr. Blom stated that he didn't do this, the way it was done in 1995 was impractical.

Mr. Yonke stated that in the context of the Board of Adjustment, the legal definition of a hardship is unreasonable deprivation of use. It is not hardship in any other sense.

Member Trabue stated that in dealing with lot lines a lot on a daily basis, Member Trabue would much rather have one straight line there than have two or three tangents just to make this stem 59-feet.

Member Trabue made and Member Rootes seconded a motion to approve a request by Darren and Sandra Freese to allow a tier lot having a stem in excess of 59' in width on property located at 1975 W. Dripping Springs Rd., Columbia.

Chairperson Rootes - NO                      Member Bowne - NO  
Member Trabue - YES

Motion to approve request does not carry.                      1 Yes                      2 No

\* \* \* \* \*

## **NEW BUSINESS**

Web access.

Secretary, Paula Evans stated that the County is currently in the process of getting all of the minutes, agendas and Members name, address, and phone numbers on the Boone County website.

Chairperson Rootes stated that she hoped that we could get more information on the web. Chairperson Rootes asked if there would be links to the staff reports and links to the maps.

Ms. Evans stated that she didn't believe so as the staff reports are not available sometimes until the day of the meeting.

Chairperson stated that the City Planning and Zoning Commission gets their agenda up quickly, the links to the maps don't come up for quite a while and the link to the staff report doesn't come up until the packet is mailed out. It is still very helpful.

Mr. Yonke stated that the odds are that there wouldn't be any graphics.

Mr. Florea stated that the City is a little better funded than the County. The County probably wouldn't be able to get the graphics on the site. Getting the type written format documents on the site is not going to be a problem, but the graphics will be.

Chairperson Rootes stated that if the map isn't any better, and wouldn't be any better than what the Member's got for this property, it wouldn't be very helpful anyway. Chairperson Rootes stated that she did drive out to the property but it was impossible to locate the property.

Mr. Yonke stated that is a feature of how screwed up the property was to begin with.

Chairperson Rootes stated that the maps that were included were not adequate to locate the property.

Member Trabue stated that if the Members had an address it would help. Maybe staff could include an address of a couple of the parcels

Mr. Florea stated that maybe the Boone Electric maps might help.

DRAFT ONLY

**OLD BUSINESS**

None.

**ADJOURN**

Meeting adjourned at 8:25 p.m.

Respectfully Submitted,

Paula L Evans  
Secretary

Minutes approved this 25th day of July 2002.