

BOONE COUNTY BOARD OF ADJUSTMENT

BOONE COUNTY GOVERNMENT CENTER

801 E. WALNUT ST., COLUMBIA, MO.

Thursday, June 26, 2003

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
Tom Trabue
Cindy Bowne
Gregory Bier
Matthew Thomas

Absent: None

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

Minutes of the May 22, 2003 meeting were approved no corrections.

REQUEST

1. Case Number 2003-009

Request by Carl Freiling for a variance from the minimum lot depth standard of 250' as required by **TABLE A, REQUIRED SUBDIVISION DESIGN AND IMPROVEMENT STANDARDS**, Boone County Subdivision Regulations, on a 10.0 acre tract located at 24400 S. Missouri Riverview Drive, Hartsburg.

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.

The subject of the variance request is a proposed 10-acre parcel, proposed tract 5, which is part of a 78.21 acre parent parcel. The applicant has submitted an administrative survey that, if approved, will divide the parent parcel in to three lots between 10 and 20 acres in area and two lots that are greater than 20 acres in area.

Table A, Appendix B of the subdivision regulations establishes the minimum lot depth for all tracts greater than 2.49 acres but less than 20-acres in area. The minimum depth for such lots is 250-feet. As proposed, tract 5 is approximately 2500-feet wide. The northern 160-feet +/- and the southern 200-feet +/- of tract 5 comply with the minimum lot depth of 250-feet. The middle approximately 1740 feet do not comply with the minimum lot depth of 250-feet.

- a.) The applicant will not incur unreasonable and unnecessary hardship if this variance is not granted. Proposed tract 5 is part of a 78.21 acre parent parcel. The need to obtain a variance is caused by the design of the administrative survey, an act of the property owner. This lot can be designed to comply with the subdivision regulations. By including the future road and utility easement in the area of tract 5 an additional 50-feet of width is added. This reduces the amount of the lot that does not comply to approximately 970-feet of the total width of the lot. Shifting the property line an additional 20 to 50 feet results in a tract that is completely in compliance with the minimum depth and does not require a variance.
- 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. It is the intent of the subdivision regulations to establish minimum standards for subdivided lots. A process for variances is provided to prevent undue hardship to an owner of property that cannot be made to comply with the subdivision regulations. It is not intended that a variance be granted to accommodate a design that is preferred by the property owner, when a compliant design is possible.

Staff recommends that this variance be denied for failure to comply with criteria A and C.

Present: Carl Freiling, 17300 Burnett School Rd., Ashland.

Mr. Freiling stated that until the plat was presented the applicants didn't realize that there was a problem. The requirements for a variance clearly state that topography is one of the basis. In this case the shape of the lot is dictated entirely by topography. Applicants did not choose to make a long skinny lot. Had the applicants been able to include the roadway in the 10-acre tract under what they were advised with the subdivision regulations the applicants would have done that; it could have been made 70-feet wider. It was applicants understanding that the roadway had to be attached to the 20-acre tract.

Mr. Freiling presented an aerial photograph showing the subject property.

Mr. Freiling pointed out the location of the property and the building sites on the map.

A discussion took place between the applicant and the Board of Adjustment members at the Commissioners table. The discussion included the location of the road and the reason for its placement.

Mr. Florea stated that Mr. Freiling had mentioned that the subdivision regulations prevented the applicants from straddling the easement.

Mr. Freiling stated that is what the County had told the applicants.

Mr. Florea stated that the planning staff did not state that.

Mr. Yonke stated that an easement can cross a tract, you can't have a lot divided by a piece of another lot.

Mr. Freiling asked if the private road had to be tied to a 20-acre tract.

Mr. Florea stated maybe; the stem portion does because you can't have a stem lot in an administrative survey.

Mr. Freiling stated that since the applicants no longer own a portion it has automatically has created a stem.

Mr. Florea stated that the stem could have been attached to another piece of property the applicants own.

Mr. Freiling stated that there is a stem existing; so it would have had to be attached to the 20-acre tract because it was a stem.

Mr. Florea stated yes. But the easement could straddle; the property lines don't necessarily have to coincide with the easement boundary.

Mr. Freiling stated that he would rather learn from his mistake and receive the variance than spend the money to replat and end up with the same thing.

More discussion took place regarding the easement, stem and number of tracts.

Chairperson Rootes stated that the line could be moved and recorded differently but the easement, road and utilities are still going to go in the same place because that is the only place to put it. People will only be building on one side of the road.

Mr. Freiling stated that the building choices are still the same and the building dimensions will still be the same.

Chairperson Rootes stated that it would end up being developed exactly the same.

Mr. Freiling stated that the applicants would have to resurvey and replat and transfer property back and forth.

Open to public hearing.

No one spoke in favor of the request.

Speaking in opposition to the request:

Penny Roscoe, 23441 Missouri River View Dr., Hartsburg.

Ms. Roscoe stated that she lived at the beginning of the road. Ms. Roscoe stated that she is here speaking on behalf of Patty Ritchie, and Brian Nodine, Wayne and Ruth Haus, Sharon and Brandon Easter, which are all long time residents on the road and in the neighborhood.

Ms. Roscoe asked if the neighboring land owners have been contacted about this.

Mr. Florea stated that all property owners within 1000 feet of the property have been notified.

Ms. Roscoe asked if there was any possible way the road could be moved to compensate for the 80-feet that doesn't meet the regulations.

Mr. Florea stated that according to Mr. Freiling the location of the road would be difficult to move because of topographical concerns dictated where the road is. There is an easement that the road is on that is attached to one of the properties that has been divided. It would be possible to reattach that strip of land to the property in question thereby widening it by 50-feet; that doesn't change where the road is but it shifts the property line 50-feet to make it closer to being compliant with the regulations.

Ms. Roscoe stated that there is a safety concern; the regulation for lagoons is 50-foot from a property line and 50-feet from a roadway. Children are drawn to water and a lagoon would be closer to the roadway, more visible and that is a large concern. The lagoon could be too close to a neighbors house, too close to the front property line and too close to the road and that would be a safety concern that could endanger the public. These regulations and rules are made for a reason as well as safety concerns. If the lagoon is visible from the road it could cause the property values to decrease and there is a concern of the runoff of the septic or lagoon system polluting the neighboring property because that land does have a slope to the back of it, it is not a flat piece of property as Mr. Freiling stated. When Mr. Freiling purchased that large property there were 248 acres to it. If Mr. Freiling doesn't receive the variance 10-acres of land wouldn't cause him any loss. Ms. Roscoe stated that she lives in a wonderful neighborhood and they all comply with the laws and regulations and would like to continue with that.

Member Trabue asked Ms. Roscoe where she lived.

Ms. Roscoe stated that she is the first house on the right on Missouri River View Drive. Ms. Roscoe stated that her father owned a fairly large tract on the other side.

Margaret Tyler, 1923 Timber Road, Jefferson City.

Ms. Tyler stated that she and her husband own 12-acres on south Missouri River View Drive across the road from Tom Walsh's property. Ms. Tyler stated that opposition may be a strong word but she wanted to express her reservations to the extent that there is more room between houses, more woods, more quiet, more buffer between houses. Ms. Tyler stated that because of this her property is more pleasant and more valuable. Ms. Tyler stated that the neighbors are less wealthy that you might expect people who are

fortunate enough to own this kind of land might be. The neighbors have made a decision to commit a significant portion of their resources to owning land in this area. Ms. Tyler asked the Board to take this in to consideration as they make their decision. The neighbors do not want to cause any hardship for Mr. Freiling. Ms. Tyler stated that she has not built on Missouri River View Drive, she lives in Jefferson City.

Closed to public hearing.

Member Trabue stated that he went to the site and it is a beautiful piece of property. The road is primarily a ridge road and the location was dictated by where the clearing already was. There has been additional clearing to widen it for the water lines and utility lines. With regard to the topographical features; that is a consideration. Member Trabue stated that the road could be moved over and meet the regulations with one exception, at the intersection of the property line between tract 1 and tract 2 there is a hole about 25-feet off that 250-foot line on the map, it gets tight there but for the most part the topography to the west of the road easement is shown on the map, it does drop off a little bit but when you go back in to the woods it is not too bad and it is not inconceivable to build a road in that area. Member Trabue stated that he looked at the property from that perspective and asked himself if the road could be constructed according to the regulations and for the most part it can. Member Trabue stated that he had a hard time identifying building sites on tract 5; there are a couple of spots you can squeak a house in there.

Member Trabue stated that he began to evaluate in his mind what the benefits to the public and requiring someone to meet the regulations versus the benefits to the public and not disturbing more trees in the area and if that was necessary would that benefit anyone. Member Trabue stated that he is a strong proponent of the regulations but has come to the belief that he doesn't think we will benefit a great deal by moving the road. The number of trees that would be required to be moved the resulting 50-foot stretch of no vegetation where the existing road is; in effect that is what would be left there. The additional 50-foot that is left with no vegetation does not serve to create any additional building lot on the site. Member Trabue stated that he feels there is no benefit to not approving this variance. Member Trabue stated that he feels the staff recommendation to include the road and utility easement within this tract is probably appropriate because we do have precedent that we have to be concerned about when we review these types of situations. The applicant will incur some of the costs with the surveyor to make those changes and all of the wrangling with the properties. But that will be a better situation for the county and for future decision that the Board is required to make. The lot is dictated by topographic features of the area, it would be nice if more of the property to the east could make those more rectangular or square type lots but that is not achievable at this point and the Board doesn't have any say in that. Member Trabue stated that he is willing to support the request with the condition that the road easement be included in the lot to get it as close to being in compliance as possible. Approximately 80-percent of the lot would be in compliance.

Mr. Freiling stated that the applicants will take the existing road easement together with the existing utility easement which is partially in that stem and partially out of it, include all of that stem that abuts the lot on the west as a part of this lot.

Member Trabue stated that he would include the 50-foot portion of the road easement.

Mr. Freiling stated just the platted stem.

Member Trabue stated that he was dealing with the hard lines.

Mr. Freiling stated that is a sensible compromise because it does add width and makes the lot as in compliance as any cul-de-sac lot that is bi-shaped.

Member Trabue stated that Ms. Roscoe made a remark regarding a septic system. Member Trabue asked Mr. Freiling if he was going with a septic system.

Mr. Freiling stated that a soil test would not allow for a lagoon at the sites. You can't have a septic system if your soil doesn't have an adequate moisture absorption.

Member Trabue stated that the applicants are proposing a septic system.

Mr. Freiling stated that the applicants have to prove that they can not have a septic system through the County Health Department before they are allowed to consider a lagoon. Every one of the lots have tested for a septic system and leach field.

Ms. Roscoe asked if the septic system will meet the codes from the Health Department.

Mr. Freiling stated that you can't get a building permit if you don't meet the County Health Department regulations.

Member Bowne asked the applicants if they were putting in a septic system with lateral lines.

Mr. Freiling stated that it would just be a standard septic system with leach field.

Member Bier stated that is the applicants choice; whoever builds there may choose to do a sand system.

Mr. Freiling stated that as long as it is a system that the County approves he is not going to have an architectural objection.

Ms. Roscoe stated that the soil there is clay.

Mr. Freiling stated that Ms. Roscoe's property is much further north on the ridge and on the west slope of the ridge. The winds that deposited the soil blew soil out of the river bottoms to the west and southwest and it scoured the west side and dropped it on the east side.

Ms. Roscoe stated that she has lived in the area for 20 years and knows the type of soil in the area.

Member Trabue stated that any system that is put in will have to meet the County health regulations. Mr. Freiling's architectural covenants say that they can not put a lagoon unless the owner can prove that no other system will work.

Ms. Roscoe stated that the Walsh's have four children and so a lagoon is a safety concern.

Mr. Freiling stated that the Walsh's are the only ones with a lagoon.

Discussion took place at the Members table regarding the positioning of the road and the layout of the lots.

Member Trabue stated that the applicants could build a road but it would disturb a lot of the landscape.

Ms. Roscoe stated that the landscape has been destroyed anyway.

Mr. Freiling stated that the reason for the location of the road is because the applicants met with the water district and union electric and got an agreement as to where to place the easements. Mr. Freiling stated that the applicants only cleared enough of the lots to get the roadway and utilities in. If land owners want to

leave the secondary growth that is their business and if they want to take it out that is their business. Applicants tried not to take out more than necessary.

Member Thomas asked staff if the Board could put a restriction as far as buildable space. Can the Board restrict buildable space to the portions of the lot that do comply with the 250-foot depth after the stem is added to lot 5.

Mr. Florea stated that the Board can condition a variance and that would probably be an appropriate condition.

Member Trabue stated that the topography would condition the buildable space.

Chairperson Rootes stated that she appreciates the fact that the road is curvy and looking at the map you can imagine driving along the road the vista will always be something other than a straight road. Chairperson Rootes stated that she would be opposed to a move to try and straighten the road. It would detract from the development.

Member Bowne stated that Member Trabue stated that he didn't know how much the Board were benefiting by trying to change this to meet the regulation. Member Bowne stated that she is not sure how much we are benefiting by trying to change this regulation so we can add three more building sites down there. Being zoned A-2 the property can be further subdivided.

Mr. Freiling stated that the property can not be further subdivided. It is a private road and it can not have another under development regulations for the County.

Member Bowne stated that the applicant stated that he tried to get this to be a continuation of the public road.

Mr. Freiling stated that he would rather this road be a public road than a private road. There is 1000-foot maximum for cul-de-sacs in the regulations. Applicants met with road and bridge and offered to limit themselves to the same density, either by covenant or deed, and build a county gravel road. By the time this was proposed road and bridge had changed their standards to no more gravel roads and only asphalt and showed no interest in waiving the cul-de-sac length anyway.

Member Bowne stated we are still looking at what is the benefit of adding three more lots in this area. Member Bowne stated that she doesn't know that the County is benefiting that much; Mr. Freiling will benefit and those that might be looking for a home might benefit; but what benefit is it to Boone County? We are looking at changing the regulations or getting the variance in order to add three more building lots. Member Bowne stated that when she looks at the variance and the purpose of it; one of the purposes is not so we can add three more tracts to build on. Another concern is even if the variance is granted the applicant is talking about a property that they no longer own. We don't know that this man truly will sell it; the Board can not grant a variance on property that the applicant does not own. Member Bowne stated that she doesn't think that we can grant a variance on the condition that we do something because the applicant does not own that property. What legal stand does the Board have to grant a variance and move the road over 50-feet, that is not the applicants property anymore, this should have been done before when it was still the applicants property then we might have had that leeway but right now we don't the applicant has already relinquished control of the property.

Mr. Freiling stated that staff's position is not asking for additional lots; if the lots are reconfigured there will still be the same number of lots without applying for a variance.

Mr. Florea stated that this is correct.

Mr. Freiling stated that the applicants are not asking for additional lots they are just asking that the lots conform with the topography. Mr. Freiling stated that Member Bowne's second question is very valid and he can not answer that.

Member Trabue stated that he would like to address the second question. The Board can condition this; it would be unusual for the Board to condition it on the applicant acquiring someone else's property but would rather send him forth with a condition that says that rather than send him out with no direction and his only option is to try that and then come back to the Board and the Board says no. Member Trabue stated that he would rather give the applicant some formal direction so the applicant knows exactly what he needs to do. If the property owner says no then it is a done deal, the variance never gets exercised. It is a more positive approach to address the situation.

Member Bowne stated that Mr. Freiling said that he could redivide the property and meet the regulations. Why is the Board granting a variance if the property can be redivided and meet the regulations. What is the point of just stepping around this? Member Bowen stated that if the applicant can do it with what the County has then why set a precedent of granting a variance because this is what the applicants wound up with when the applicant was done or half-way done dividing the property. Member Bowne stated that she already has a problem with granting a variance with a condition when it is not the applicants property. Member Bowne stated that she would not want the Board to grant a variance on her neighbors property under the condition that they bought some of her property; that puts pressure on her; second of all, Member Bowne stated that she doesn't believe that is within the Boards authority to do that.

Member Trabue stated that he doesn't disagree.

Chairperson Rootes stated that she feels this is a little different if Mr. Freiling just sold the property and didn't charge for the right of way. Mr. Freiling feels it can be worked out.

Mr. Freiling stated that if the Board were stuck in the circumstance they are in right now the arrangements of these lots fits the topography which is one of the reasons stated for variance. The same number of lots could be made but they wouldn't work nearly as nicely on the land as this arrangement does. This is a better use of the circumstance and of the site.

Member Bowne stated that she believes it fits the property quite well but she likes it as the 35-acres; it fits the topography great leaving at the 35-acres.

Member Bier asked the status of tracts 3 and 4.

Mr. Freiling stated that if an arrangement could be worked out on the variance those lots will all be recorded as part of the same survey.

Member Bier stated that no variance would be required if tract 4 was combined with tract 5.

Mr. Freiling stated that is correct. To read the letter of the law that is a solution. Instead of this being a convenient five tracts which require a variance it becomes four tracts that are in full compliance.

Member Bier stated that he is having a problem with setting a precedent; there is a rhyme and a reason behind the regulations.

Member Trabue stated that the applicants could bring this in to compliance by putting the lot line 250-foot parallel to that east line and the road easement could be exactly where it is right now and it would be in compliance.

Chairperson Rootes stated that the people owning tract two would not be able to care for the property all the way to the road.

Member Trabue stated that the road easement could be made all the way to the property line. The road easement does not have to magically be 50-feet wide, it could follow the 250-foot line on one side.

Mr. Freiling stated that to him, the lot configuration is dictated by the topography and there are two nice house sites on that lot.

Member Trabue made and Member Bier seconded a motion to **approve** a request by Carl Freiling for a variance from the minimum lot depth standard of 250' on a 10.0 acre tract located at 24400 S. Missouri Riverview Drive, Hartsburg **with the following condition:**

- The future road and utility easement shown on the plat be included as part of tract 5 and that the existing stem to the north of tract 1 be included as part of tract 1 to be in compliance with the regulations.

Chairperson Rootes	Yes	Member Trabue	Yes
Member Bowne	NO	Member Bier	Yes
Member Thomas	Yes		

Motion to approve request carries. 4 Yes 1 NO

NEW BUSINESS

None

OLD BUSINESS

None.

ADJOURN

Meeting adjourned at 8:09 p.m.

Respectfully Submitted,

Paula L Evans
Secretary

Minutes approved this 24th day of July 2003.