

BOONE COUNTY BOARD OF ADJUSTMENT

BOONE COUNTY GOVERNMENT CENTER

801 E. WALNUT ST., COLUMBIA, MO.

Thursday, September 25, 2003

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

Chairperson Bowne 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: Cindy Bowne, Chairperson
Matthew Thomas, Vice-Chairperson
Linda Rootes
Gregory Bier

Absent: Frank Thomas

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

Minutes of the August 28, 2003 meeting were approved with no corrections.

REQUEST

1. Case Number 2003-015

Request by Paul Musket for a variance from the required 6-foot side setback for a house located at 2720 N Penny Ln., Columbia (**Zoning Regulations, Section 10. A.**)

Bill Florea gave the staff report stating that the current zoning of the property is R-S; the adjacent zoning is also R-S. The site is located just east of Columbia in the Lake of the Woods area. This is a residential lot with a house currently under construction; the house is less than 6 feet from the side property line. The original zoning of this tract is R-S; Breezewood Estates subdivision was platted in 1999. The requested variance is for a side yard setback variance per zoning regulations section 10 A. Staff notified 80 property owners.

Present: Paul Musket, 2720 N. Penny Lane, Columbia.

Chairperson Bowne stated that the applicant had included a lengthy description in the application.

Mr. Musket stated that he would like to add that at no time do the applicants intend on crossing the 6-foot line for building. The applicants tried to stay 8-foot off the property line from what the applicants believed to be the property line to be. The applicants have made every attempt to try to make sure they don't disturb or harm anyone else around them. The applicants are trying to bury their down spouts. Mr. Musket asked the Board to take everything in to consideration and they will try to work with the existing home owners to make sure everyone is happy. Mr. Musket apologized for the inconvenience caused to everyone.

Open to public hearing.

No one spoke in favor of the request.

Present speaking in opposition to the request:

Chris Wilson, 2700 Penny Lane, Columbia.

Mr. Wilson presented photos of the property. Mr. Wilson also presented a letter to the Board.

Chairperson Bowne read the letter from John Gage, Property Professionals of Mid Missouri, Plaza Real Estate Services, in to the record.

Mr. Wilson stated that he had three concerns about this variance. One is the decrease in the property value. Mr. Wilson stated that he also talked to Bill Pohlman who is the appraiser of the property and he said that minimum loss due to encroachment is 3 percent. Mr. Wilson stated that if he owned his home for five years and with an increase in value of 3 percent, which is a very conservative estimate, he would lose \$4600 upon sale. If he owned the home for 7 years he would lose \$4900. If his home increased in value at 5 percent per year he would lose \$5000 in 5 years and \$5800 in 7 years. Somewhere between \$4000 and \$5000 is what he would lose if he sold his home in 5 to 7 years, which according to the National Association of Realtors is the average amount of time someone stays in a home. The second concern is drainage. Damage that was caused from drainage while the home was being built and drainage concerns that are continuing at this point. The house is elevated; it is elevated from its original condition by at least 3-feet.

Mr. Wilson stated that when he asked Mr. Musket about this he replied that he has had problems with water before. Unfortunately in this case these problems are transferred to Mr. Wilson. Mr. Wilson stated that he has had problems with cracks in concrete under the tile and on that side of the house. Those problems did occur before the house was there but they have increased. Mr. Wilson stated that he is not saying he can make any kind of correlation between those events but there is water in on that side of the house closest to Mr. Muskets home. In addition when the down spouts were not connected the water headed directly to his

house. The silt from this has altered the level of the side yard making it more likely that water approaches the foundation. There are concerns with drainage which are existent from photos that were taken; the retaining wall is very close to the property line, in some cases as close as a 1/2 inch. Because of that, when water runs down the property line it has no choice but to head toward Mr. Wilson's house. Because of this, Mr. Wilson stated his side yard stays wet for days. Mr. Musket had connected the down spouts to a pipe that terminates on the side of a hill, since water runs down hill, the water from the pipe runs on to his property. This is evident in the photos presented. There is mud that is stacked up on the sidewalk. Mr. Wilson stated that he is not sure what the restrictions are on how far that pipe can go, but if the pipe remains and terminates 10-feet from the street, the water from half of the side of the roof will leave that pipe and have only one choice and that is to run on to his property.

Mr. Wilson stated that his third concern is that the retaining wall is not finished, not only that but it needs to be extended by at least 10-feet on each side, in the past two weeks it has been worked on two days. Because of these concerns Mr. Wilson would like to have this variance postponed until the retaining wall is completed, Mr. Wilson's side yard is re graded and the drainage concerns and property value concerns are met.

Joe Pangborn, home inspector, 4509 E. Bridgewood Dr., Columbia.

Mr. Pangborn stated that he was at the property when Mr. Wilson purchased his property. Mr. Pangborn evaluated the property and its condition at the time. At that time Mr. Musket's lot was vacant, there had been no construction in progress at that point. The level of the lot was even with the front yard of Mr. Wilson's property. Mr. Pangborn stated that his concerns, which he shared with Mr. Wilson, was the amount of water runoff coming from that property as well as the structure itself when you have the water coming off the roof through the gutters and down spouts and directed to an adjoining property you are going to have some water concerns. The concerns that he has with Mr. Wilson's property, as mentioned, was cracked tile. It has exceeded more than just normal settling of a house. The builder was out there and there was some cracking of tile early in before the house was built at one section on the same side of the property of the concern. Mr. Pangborn stated that when he was out there this morning he saw the builder who had built Mr. Wilson's house, the cracking has gotten worse in that area as well as a second crack in the same lateral direction parallel to the first one has occurred.

Chairperson Bowne asked Mr. Pangborn to define the tile he was speaking of.

Mr. Pangborn stated that it is the tile that is in the kitchen that is on the north side of the house. The house has shown some evidence of settling, more so than what we would like to consider as typical settling. Water is the number one problem of settling around foundations. There is a lot of yardage as well as roof drainage that is directed to the side of Mr. Wilson's property. Mr. Pangborn stated that his concern when he was out there today was that although the wall has started, it is still far from being complete and was a little shocked that it wasn't complete from when he first saw it about three weeks ago when it had been started. Mr. Pangborn stated that he doesn't understand why it has taken so long and it is still not done, it is a good two day project if someone would just get out there and get it done. There is a concern of how far that wall will be extended, is it going to stop where it is at currently as the photos show. Mr. Pangborn stated that his opinion is that there is enough ground slope that is coming around both ends of those walls that it is going to continue to cause erosion and therefore dump more silt and alter the drainage that Mr. Wilson has established around his property and that could create more settling problems for his property.

Closed to public hearing.

Mr. Florea stated that Mr. Shawver took a call from an owner across the street and asked who is responsible for the error and they had claimed that there was a building inspection error. The caller didn't register any opinion for or against the variance request.

Member M. Thomas stated that it looks like the applicant connected a down spout and got a black plastic pipe running the majority of the way to the street. Member M. Thomas asked the applicant if he planned on burying the pipe and running it all the way to the street.

Mr. Musket stated he would if approved by the inspectors. The photo doesn't indicate that. Mr. Musket stated that there is another photo that he has that shows the lot when he originally purchased it.

Mr. Florea stated that the photos were submitted with the application.

Mr. Florea reminded the Board that the variance request is a setback variance and it would be wise to look at the issues that are raised in opposition as to whether those are caused by the setback variance request and the quarter to three-quarter foot encroachment in to the side setback, or if those are issues that would have been issues regardless of whether they met the setback or not.

Chairperson Bowne stated that the setback requirement is 6-foot so the regulations are requiring a minimum of 12-feet in between the two houses.

Mr. Musket stated that in the photo of when he originally purchased the lot it shows a serious drainage problem with that property on all three lots. That problem existed in the beginning. When the applicant built his house he didn't want to continue to fight that problem which is why he set the home at the same level as the back yards of the three houses. Mr. Musket stated that he felt this was an appropriate thing to do. Mr. Wilson indicated to the applicant that even before Mr. Muskets house was built Mr. Wilson had problems with the house, with the builder, the sewer and the house having cracks in the concrete. Mr. Musket stated that he has tried to channel the water around the back of his house to the extent that water is running all the way around his house and out the front yard and eroding in front of the sidewalk. Mr. Musket stated that he has tried to move as much water as he can from all three lots. In addition the back yard is sloped and at least 50 to 60-percent of it runs away from Mr. Wilson's property. Mr. Musket stated that he is willing to work with Mr. Wilson on where the retaining wall should go.

Member Bowne asked the applicant if he intended to bury the remainder of the drainage line and how far out to the road was his intention. The applicant had indicated that this was thrown back at planning.

Mr. Musket stated that it has not been thrown back, applicant would be happy to work with them as to where he could go with it. Mr. Musket stated that he would be happy to go all the way to the road if that is what they want.

Mr. Florea stated that this is not prohibited but it is probably not the best stormwater management practice, it is better to try and absorb it on the lot.

Mr. Musket stated that he has tried to make an attempt to remove the water from his downspouts. Applicants asked Mr. Wilson if he would like applicant to help him bury his and Mr. Wilson has never done anything to let the water from his downspout sit between his house.

Chairperson Bowne asked how long the applicant intends the retaining wall to be.

Mr. Musket stated that he intended to take it to the back part of the house because he and Mr. Wilson would like to build privacy fences for small dogs that they have. When it comes in to the front it will come out about 8 to 10-feet and curve it back to the driveway to put planting beds there. Applicants will be happy to go further back if that is what is decided. The intentions are to have a fence in the backyard also.

Member M. Thomas stated that Mr. Florea brought up whether or not the setback is a problem. Would moving the house back another 5 inches solve this problem? Member M. Thomas stated that his opinion is no.

Mr. Musket stated that when he looked at building a house he could have put a two-story house there and could have been 6-foot off the property line and it could have been an ominous house looming over everything, applicants elected to go with a slab.

Member Bier asked if the length of the retaining wall is the extent of what the applicant plans on doing.

Mr. Musket stated not to the front, applicants intend on coming out another 8-feet out and curving back to the driveway, this will create a planting bed.

Member Rootes stated that her opinion that having the house set 3-inches further from the line in the front and 9-inches further from the line at the rear of the house probably would not change the situation. Member Rootes stated that she doesn't see the setback as the cause of any of Mr. Wilson's problems. There may be other issues with the elevation of the house.

Member M. Thomas stated that he agrees that those issues have to be dealt with but doesn't believe that those particular issues are issues for this Board. The only issue that this Board has to deal with is whether or not the setback variance should be allowed or not. There are drainage issues and property value issues but that is not the intent of this variance.

Chairperson Bowne stated that she agrees the setback is not the cause of the problems. During construction there is always siltation and additional drainage problems, unfortunately we have to deal with those as we go through the construction phase. It is important to maintain the measures that are being put in place. The neighbor would still be having problems if the home was even one foot further from the property line. The fact that the house is elevated didn't increase the drainage problem, the drainage that comes off the house is coming off the roof, it is not coming off the sidewalls.

Member Rootes stated that from Mr. Wilson's picture, it is evident that everyone though the property line was over a considerable distance closer to Mr. Wilson's house because that is where the sidewalk ended. At the time of Mr. Wilson's house being built the builder thought the property line ended there. It is quite reasonable that Mr. Musket thought that is where the property line was.

Member Bowne stated that she didn't believe that there was any intent to encroach the property line.

Member M. Thomas made and Member Bier seconded a motion to **approve a request by Paul Musket for a variance from the required 6-foot side setback for a house located at 2720 N Penny Ln., Columbia.**

Chairperson Bowne Yes
Member M. Thomas Yes

Member Rootes Yes
Member Bier Yes

Motion to approve request carries. 4 Yes 0 No

Chairperson Bowne stated that the variance is applied to the property, not ownership.

NEW BUSINESS

None.

OLD BUSINESS

None.

ADJOURN

Meeting adjourned at 7:30 p.m.

Respectfully Submitted,

Paula L Evans
Secretary

Minutes approved this 23rd day of October 2003.