

BOONE COUNTY BOARD OF ADJUSTMENT

BOONE COUNTY GOVERNMENT CENTER

801 E. WALNUT ST., COLUMBIA, MO.

Thursday, April 22, 2004

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
Frank Thomas

Absent: None.

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

Minutes of the February 26, 2004 meeting were approved with no corrections.

REQUEST

1. Case Number 2004-002

Request by Rajiv Shah on behalf of Brentwoods Inc. for a variance from the front setback requirements for a canopy located at 1641 W. Route K, Columbia. (**Zoning Regulations, Section 10. A.**)

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.

There is an existing convenience store with gas pumps under a canopy on the property. Appendix B, Section 1.8.2 requires a 50-foot building line adjacent to state highways. The canopy extends into the required area.

- a.) The applicant will incur unreasonable and unnecessary hardship if this variance is not granted; it would be impractical to require the existing canopy and fuel pumps to be moved.
- b.) Granting this variance will not endanger the health, safety, or welfare of the public; the canopy has been in place since 1996 and will not pose a threat to the public.
- c.) Granting this variance will not thwart or circumvent the general intent of the regulations. The C-N district has a front setback of 10 feet; by plating the lot, the requirement for a 50-foot building line is a standard.

Staff recommends that this variance be granted.

Present: Rajiv Shah, 113 Coventry Ct., Columbia.
Dave Oldham, A Civil Group, 1010 Fay St., Columbia.

Mr. Shah stated that there is an existing canopy above the gas pumps and it does not meet all the requirements and he is asking that it be made to meet all the requirements.

Mr. Oldham stated that the reason the applicants are bringing this up this evening is that in the process of taking a look at the property for potential future expansion it was brought to the applicants attention that there was an omission on the plat. As soon as the applicants were made aware of that omission Mr. Shah very honestly noted that we had an issue there and we wanted to bring that up to the attention of the Board of Adjustment because it appears to be an omission from the original plat. The original plat is referred to as Little General. It is dated in 2001 and the canopy is not shown on that drawing.

Chairperson Bowne asked how far the canopy went in to the building line.

Mr. Oldham stated that the applicants have conducted surveys of the property and it does encroach upon the 50-foot building line so it is partly within the building line and partly crossing the building line. Chairperson Bowne asked how far the canopy extends in to the building line.

Mr. Oldham stated that at this time he was not sure how many feet it encroaches.

Open to public hearing.

No one spoke in favor of or in opposition to the request.

Closed to public hearing.

Chairperson Bowne asked staff if they received any responses about this request.

Mr. Florea stated yes. The caller did not register an opinion one way or the other when they heard about the issue.

Chairperson Bowne asked staff if they had any record of how far the canopy encroaches in to the building line.

Mr. Florea stated no.

Chairperson Bowne stated that the C-N district has a front setback of 10-feet and by platting the 50-foot building line is a standard.

Mr. Florea stated that setbacks are normally dictated by the zoning ordinance, in the C-N district there is a 10-foot front setback. When the subdivision regulations have a provision that say when you plat land that is adjacent to a state right of way you shall establish a 50-foot building line regardless of the zoning. That is where the problem came and as Mr. Oldham stated the property was platted in 2001, the canopy was built in 1996. The surveyor who was not from Mr. Oldham's firm failed to show the canopy as required on the plat so staff didn't pick it up as the plat was done. Subsequently Mr. Shah purchased the property and then the omission was discovered. Mr. Shaw is here trying to correct what was omitted by the previous subdivision plat.

Mr. Bier asked what type of expansion the applicants were planning on the property.

Mr. Shah stated storage units in the back of the property.

Chairperson Bowne stated that generally her take on this when the Board grants a variance she prefers to grant a variance for the existing structure. If something should happen rather it be remodeling job or an expansion of the pumps, that is changing things. Chairperson Bowne stated that it is her personal thing not to include any future changes but just grant a variance for the existing structure.

Mr. Shah stated that the applicants are not planning any changes to the existing structure at this time. At the back of the convenience store there is open land which used to be trailer homes and they have been removed. The applicants are planning to put in storage units.

Member M. Thomas made and Member Bier seconded a motion to **approve** a request by Rajiv Shah on behalf of Brentwoods Inc. for a variance from the front setback requirements for a canopy located at 1641 W. Route K, Columbia (**Zoning Regulations, Section 10. A.**).

Chairperson Bowne	Yes	Member F. Thomas	Yes
Member M. Thomas	Yes	Member Rootes	Yes

Member Bier Yes

Motion to approve request carries. 5 Yes 0 No

2. Case Number 2004-003

Request by Alfred W. Lee for a variance from the front setback requirements for a residential garage located 4951 E Hwy 124, Hallsville. (**Zoning Regulations, Section 10. A.**)

Planner, Thad Yonke 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 applicant is in the process of platting the land that they own. There is an existing house and garage on their property. Appendix B, Section 1.8.2 requires a 50-foot building line adjacent to state highways. The applicant was required to dedicate an additional 3-foot of right of way as part of the platting process. The additional right of way resulted in the garage intruding in to the building line.

- a.) The applicant will incur unreasonable and unnecessary hardship if this variance is not granted; it would be impractical to require the existing garage to be moved.
- b.) Granting this variance will not endanger the health, safety or welfare of the public; the existing garage has been in place for many years and will not pose a threat to the public.
- c.) Granting this variance will not thwart or circumvent the general intent of the regulations; if the land was not being platted the garage would comply with the required setback.

Staff recommends that this variance be granted.

Present: Don Bormann, 101 W. Singleton, Centralia.
Steve Lee, 17200 Tucker School Rd., Sturgeon.

Mr. Bormann stated that the garage is in compliance with the existing zoning regulations although at the time it was built it probably didn't need to meet those regulations. In platting this to make 2 lots where there is now one tract of land the applicants have to dedicate an extra 3-feet of right of way. Once that extra 3-foot is dedicated the corner of the garage now sticks over the building line about 1-foot.

Open to public hearing.

No one spoke in favor of or in opposition to the request.

Closed to public hearing.

Chairperson Bowne asked staff if they received any responses from the neighbors.

Mr. Yonke stated no.

Member M. Thomas made and Member Bier seconded a motion to **approve** a request by Alfred W. lee for a variance from the front setback requirements for the portion of the residential garage that extends in to the building line, located 4951 E Hwy 124, Hallsville (**Zoning Regulations, Section 10. A.**).

Chairperson Bowne	Yes	Member F. Thomas	Yes
Member M. Thomas	Yes	Member Rootes	Yes
Member Bier	Yes		

Motion to approve request carries. 5 Yes 0 No

Chairperson Bowne stated that the Board has voted to grant the request with the condition that this is for the existing structure only, if something should happen to the building and it has to be rebuilt it would have to be built outside of the building line.

3. Case Number 2004-004

Request by Kelly Crump for a variance from the front setback requirements for residences located at 593 E Hwy M, Hartsburg. (**Zoning Regulations, Section 10. A.**)

Planner, Thad Yonke the staff report stating that the current zoning is A-2 as is all the surrounding zoning. The site is located on highway M approximately 5 miles southwest of Ashland. There is a house and a mobile home on the property. The property owner is in the process of platting the land in to 2 lots. The existing house is situated in the required front setback of 50-foot and in to the required 20-foot utility easement. The mobile home is situated in the front setback of 50-feet. The original zoning is A-2, there have been no previous requests for this property. The requested variance if from zoning regulations section 10A. Staff notified 16 property owners.

Present: Gene Basinger, surveyor, 300 St. James St., Columbia.

Mr. Basinger stated that the applicants are trying to plat this piece of land, there is about 45 acres. The applicants are trying to plat 2 lots, one to include the mobile home and one to include the home that is there and the rest of the land will be sold as a separate piece. The house sits over the building line and the proposed utility easement and the mobile home sits over the 50-foot building line.

Chairperson Bowne asked how much the house sits over the setback and the building line.

Mr. Basinger stated that he doesn't have the exact figure.

Chairperson Bowne asked if the entire mobile home sits over the building line.

Mr. Basinger stated no, not the whole mobile home, just part of it.

Member M. Thomas stated that it appears to be the majority of the house and about 2/3 of the mobile home.

Mr. Basinger stated that the majority of the house sits over the building line, a small portion of the house and the porch sits over the utility easement. About 7-percent of the mobile home sits over the building line.

Open to public hearing.

No one spoke in favor of the request.

Present, speaking in opposition to the request:

Elizabeth Smith, 623 E. Route M, Hartsburg.

Ms. Smith stated that she opposes the mobile home. The house has been there much longer than Ms. Smith has been. The mobile home has been there about 15 years. Ms. Smith stated that she has lived there for approximately 27 years and haven't liked the mobile home since it has been there.

Chairperson Bowne asked if Ms. Smith was opposed to the mobile home in general or opposed to the location.

Ms. Smith stated she is opposed to the location and to the mobile home in general.

Chairperson Bowne asked Ms. Smith her justification for being opposed to the location of the mobile home.

Ms. Smith stated she is opposed to where it sits and the way it sets and the way it looks.

Chairperson Bowne asked Ms. Smith if she feels it is too close to the road or too close to the adjoining house.

Ms. Smith stated that her property sits directly to the east of it. Ms. Smith stated that she opposes the mobile home.

Chairperson Bowne asked how far the mobile home is from Ms. Smith's home.

Ms. Smith stated that she would estimate probably 35 to 40 feet.

Closed to public hearing.

Chairperson Bowne asked staff if they received any responses from the neighbors.

Mr. Yonke stated that staff took 7 calls. One of the concerns were just in general wanting to know what the situation was. Most of the phone calls were dealing with if it were just the setback issue and it was that way already then they weren't really concerned. They were concerned as to whether the mobile home was going to stay. One of the calls today indicated that they were concerned, not about the mobile home, but that the property was going to be utilized for some type of automotive repair business in the future, there may be some inoperable vehicles on the property now. The other call was related to whether the mobile home was going to stay there. The other calls were just trying to figure out what the request was about.

Chairperson Bowne asked why there were two homes on this property and were they both legal homes on the property.

Mr. Yonke stated that as a 45-acre parcel it is eligible for two dwellings before the land has to be divided. When it was one big 45-acre parcel it had two dwelling units and it was not a problem, it met the requirements. What we get in to here is because the land is being platted you end up with a five acre piece

that is being taken off of a 45-acre piece ending up with both of the dwelling units within that five acres, that five acres is being divided in half which causes it to have platting requirements and causes the building line and utility easement to come in to play. There are other issues with respect to the mobile home that would have to be addressed now that it will be on a 2 ½ acre piece because it would require a conditional use permit for it to actually remain there even if a variance is granted because of the nature of being on a 2 ½ acre lot.

Chairperson Bowne stated that because we are looking at this we may be able to address several issues at once. If it is replatted in to two 2 ½ and a 40-acre tract where the structures are now we know encroach on the setback and building line restriction. Where they are located now would there be a problem with the proximity to the property lines to the distance from another structure.

Mr. Yonke stated that the homes do meet the side setback requirements for the proposed property lines.

Member M. Thomas stated that a wastewater system is a concern.

Mr. Yonke stated that the health department comments on all plats and their comments on lots that are 2 ½ acres, which is the minimum that they will allow an on-site system. It can get really difficult to get one on to a piece of land like this and make it comply with the regulations. As newly platted lots they are going to have to comply with the regulations for on-site wastewater.

Chairperson Bowne stated that those are concerns that she had, they are not really concerns that the Board will be addressing. The question before the Board right now is the two structures as they are encroaching on the building line. The Board has two choices here. The Board can either address the request as it is for both structures or they can be split and look at each structure.

Member M. Thomas stated that it is one plat so you either cover them both or you don't cover them both.

Member M. Thomas stated that his opinion on the house is to grant the variance for the existing structure only and if anything was to happen to the existing structure it would have to meet the setback requirements. As far as the mobile home Member M. Thomas stated that he can sympathize with Ms. Smith's dislike for mobile homes but that is not really an issue for this Board. Member M. Thomas stated that his opinion is that a variance should be granted for the mobile home as well but if a new mobile home were purchased or a new structure was built then it would have to be in compliance with the setbacks.

Mr. Basinger stated that if this plat goes through and becomes a subdivision plat then a mobile home would not be allowed on the property if the old one is removed. This is the only mobile home that will be on the property. If this area is not platted the mobile home can be replaced.

Mr. Yonke stated that if the 45-acres stayed that size that single wide mobile home could be swapped out in it's current location as long as it met the general requirements as long as it got a variance because it is still in the setback.

Member M. Thomas stated that the setback wouldn't exist if it wasn't platted.

Mr. Yonke stated that there is a zoning setback anyway.

Mr. Basinger asked if the location was grandfathered.

Mr. Florea stated that hasn't been determined yet.

Mr. Yonke stated that it could be a non conforming use for that purpose. As far as a conditional use permit is concerned if a mobile home is to stay here even if the variance is granted it still requires a conditional use permit for it to remain as part of the plat. If a conditional use permit is granted then depending on the conditions placed on the permit it could possibly be switched out for another singlewide mobile home in the future.

Member F. Thomas stated that if the house is damaged and has to be built back at the right locations that everything else fits within the 2 ½ acre lot.

Mr. Yonke stated that if the variances are granted and the structures are damaged or removed then they have to meet all the regulations with respect to the lots. If the health department has a concern before the plat gets recorded there may be some information the health department will require before it can go further to show that it can meet the requirements.

Member Bier asked what year the mobile home was.

Mr. Basinger stated he had no idea.

Member Bier stated that there were concerns that were addressed at another meeting about pre 1976 mobile homes.

Mr. Yonke stated that if it were a pre 1976 then it would be before the Board for another variance as well.

Member Rootes asked if that would be disclosed at the time of the conditional use request.

Mr. Yonke stated yes.

Member Bier stated that if the Board approves this variance it gets passed on to someone else.

Mr. Yonke stated that if that time they find out it is a pre 1976 it will come back before this Board.

Chairperson Bowne stated that she looks at a house as a permanent dwelling and is not going to ask someone to move a permanent dwelling for a small area of setback even if it is their choice to sell the property and divide it up. A mobile home on the other hand is more of a temporary dwelling. It does not have as long a life span as a house and we don't know the age of it but we do know that it is at least 15 years old. The land owners are choosing to replat this property and sell part of it off and as part of that choice there are going to be some expenses involved in that. Chairperson Bowne stated that she is not inclined to grant a variance for a temporary dwelling in order to make it more convenient to replat a property and sell it off. Chairperson Bowne stated that she sees that as just a part of doing business. If that doesn't meet the requirements as set forth, in a way this is a way to circumvent the rules that are outlined in the regulations. Chairperson Bowne stated that she doesn't have a problem with the house, it is a permanent dwelling but there should be a stipulation on it that if it was damaged and had to be rebuilt then it would have to meet the regulations enforced at that time.

Mr. Basinger stated that with the platting process, if you replat it and something happens that the mobile home has to be moved out of there you have gotten rid of the mobile home and any future mobile home. Mr. Basinger stated that he can not speak for the Crumps but if this variance is not granted, it is not the Crump's mobile home so Mr. Basinger stated that he doesn't know what they would do. If this property is not platted then the mobile home is basically a permanent structure.

Chairperson Bowne stated that what is before the Board is not a question to get rid of the mobile home but to look at what is before them and under what conditions can a variance be granted.

Mr. Basinger stated that the Board would be granting a variance for a hardship.

Chairperson Bowne stated that she believes that was the intent when they made the application. Chairperson Bowne stated that she doesn't see it as a hardship when ever your intent is to divide land and sell it; it is a cost of doing business. If it doesn't meet the requirements then you may have to make other arrangements in order to replat the property.

Member Rootes stated that the applicant stated the mobile home doesn't belong to the property owner and asked who the mobile home belonged to.

Mr. Basinger stated he didn't know who it belonged to but the mobile home is not the property owners. The person who lives in the mobile home owns it and that is not the property owner. The property owner lives across the highway on another piece of property. The owners acquired this property through an inheritance.

Member Rootes asked if the mobile home was already there when the applicants acquired the property.

Mr. Basinger stated that he didn't know when the applicants inherited the property.

Chairperson Bowne stated that if the applicants don't own the mobile home how can it be a hardship to the owner if the variance is not granted.

Mr. Basinger stated that unless the owners wanted to move the mobile home. Mr. Basinger stated that he didn't know what the contractual agreement is on the mobile home but if the variance is not granted they might not have a choice and may not be able to plat the property. If the Board doesn't grant the variance and the owners have a contractual agreement to rent this property then obviously they can't divide it up and they can't get rid of the mobile home.

Chairperson Bowne stated that Mr. Basinger doesn't know if the applicants have a contract.

Mr. Basinger agreed that he didn't know.

Member Rootes stated that she is not necessarily opposed to a mobile home being in that location because it is not as close as the house, the mobile home has been there a long time and it sounds like it will have to go through more scrutiny in order to stay in that location. Member Rootes stated that she doesn't mind granting the variance for both structures with the understanding that Member M. Thomas made about the current condition only and if anything changes they would have to meet current regulations.

Member Bier stated that he agreed with Chairperson Bowne's comments. Member Bier stated that he had a little difficulty with the mobile home in that it is a temporary structure.

Member Rootes stated that if the variance is not granted for the mobile home and the property owner can not make arrangements with the owner of the mobile home to get it relocated then it would be up to the property owner to decide whether to move forward or not.

Chairperson Bowne stated that all decisions lie with the property owner.

Member Rootes stated that if the applicants can make arrangements with the mobile home owner then they could go forward.

Member M. Thomas made a motion that the variance be granted for both structures and the structures only. If anything were to change with either structure then they must meet subdivision regulations.

No second, motion dies.

Chairperson Bowne stated that it is her understanding that if the Board does not move to grant the variance then that is the same thing as not granting the variance.

Mr. Yonke stated that in order for the applicants to get their relief then they must receive three affirmative votes therefore anything but three affirmative votes is in effect a denial.

Mr. Florea stated that the rules do state that three positive votes shall be required to grant in favor of the application, any less than three positive votes shall be reason for denial.

Member Bier stated that his problem is in wording a motion so that something can be done with the home and place that decision on how to go forward with the property owner.

Member Bier made a motion to approve the variance for the framed house to deny the variance for the mobile home.

Chairperson Bowne asked Member Bier if he was placing any conditions on the framed house.

Member Bier added the condition that if the framed house is damaged in anyway and needs to be rebuilt that it be moved outside the building line.

Member F. Thomas seconded the motion.

Member Bier made and Member F. Thomas seconded a motion to **approve** a variance request by Kelly Crump from the front setback requirements for the framed structure and to **deny** a variance from the front setback requirements for an existing mobile home located at 593 E Hwy M, Hartsburg (Zoning Regulations, Section 10. A.) **with the condition that if the house is damaged and needs to be rebuilt it must meet the current setback requirements**

Chairperson Bowne	Yes	Member F. Thomas	Yes
Member M. Thomas	NO	Member Rootes	Yes
Member Bier	Yes		

Motion to approve request carries. 4 Yes 1 No

NEW BUSINESS

None.

OLD BUSINESS

None.

ADJOURN

Meeting adjourned at 7:55 p.m.

Respectfully Submitted,

Paula L Evans
Secretary

Minutes approved this 27th day of May 2004.