

BOONE COUNTY BOARD OF ADJUSTMENT

BOONE COUNTY GOVERNMENT CENTER

801 E. WALNUT ST., COLUMBIA, MO.

Thursday, June 24, 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
William Hatfield
Frank Thomas

Absent: Gregory Bier

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

Minutes of the April 22, 2004 meeting were approved with a correction to capitalize the name Lee. Minutes approved as corrected.

REQUEST

4. Case Number 2004-005

Request by Rodney Pauley for a variance from the setback regulations in the A-R district for a 1.02 acre tract located at 10551 E Kroeger Rd., Centralia. **(Zoning Regulations, Section 10 A.)**

Planner Bill Florea gave the staff report stating that the current zoning of the property is A-R; adjacent property to the north is A-2, to the east is A-R, south and west are A-2. The site is located 3 miles northeast of Hallsville and is adjacent to the Colt Rail line. There is a singlewide mobile home on the tract and there are several outbuildings. The applicant would like to replace the existing mobile home with a modular home which the applicant would like to place in the same location as the current mobile home. The site does not comply with setback requirements. The original zoning for this tract is A-R and there have been no previous requests. Staff could find no records to indicate when the existing unit was placed on the property. The aerial photo would appear to show that the existing mobile home crosses the property line. The requested variance is from the zoning regulations section 10.A. which requires a minimum setback of 25-feet for the front and rear property lines and 6-feet on the side property lines. Staff notified 13 property owners about this request.

Present: Rodney Pauley, 10551 E. Kroeger Rd., Centralia.

Mr. Pauley stated that he has done some research with the Health Department for a lagoon to sit on the property and for the home to fit. Mr. Pauley stated that he can come fairly close to the setbacks and leave the house where it is. According to the aerial photo it shows the house is not on the property; Mr. Pauley stated that he doesn't believe that to be true from the measurements he is taking from the railroad tracks. The easement on the railroad tracks is 100-feet which is 50-feet on both sides of the tracks. Using that as a boundary line the house is actually about 3-feet on the property. Mr. Pauley stated that he has a drawing that shows how he can put everything on the property and make it fit. If he gets a variance on the lagoon and a variance on the home it should fit.

Chairperson Bowne stated that what the applicant is proposing according to his drawing is not putting it back right where it was but to put it in a new location.

Mr. Pauley stated that he would like to put it back where it is at. Mr. Pauley stated that he will move it to a point to try and meet the setbacks. The house is on a curve on a gravel road and the applicant is leery of moving closer to the road; if someone misses a curve they will end up in his living room.

Chairperson Bowne asked what the current setback is of the home.

Mr. Pauley stated that it is 56-feet from the center of the railroad track at the closest point.

Chairperson Bowne stated that the setback from the center of the railroad track is 50-feet. The applicant needs a variance of 19-feet. Chairperson Bowne asked the applicant if he is asking for a two-fold request; if the applicant is asking to either put the new home in the same place as the existing one or to allow it to be placed in a new location that would still require a variance from the setback.

Mr. Pauley stated that he would like it to go in the same location.

Chairperson Bowne asked the applicant if he is asking the Board to put it in a different place that would still require a variance for the setback.

Mr. Pauley stated that he is willing to give a little even though he doesn't want to.

Chairperson Bowne stated that the applicant had a two-part request for the Board. The applicant would like to put the home where the existing one was. The second part was if the applicant couldn't do that he could put it in a different location but will still require a variance.

Member Hatfield stated that on the diagram it looks like the front of the home is right on the property line.

Mr. Pauley stated that if you measure from the railroad tracks to the corner of the existing house it is 56-feet.

Member Hatfield stated that it appears where the applicant set it back it looks like it is 20-feet back.

Mr. Pauley stated that is his other alternative. That is try to come as close as he possibly can.

Member Hatfield stated that is 20-feet closer than it is now.

Mr. Pauley stated that it is 14-feet closer than it is now and it also puts him 14-feet closer to the road and he is worried about the curve in the road.

Open to public hearing.

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

Closed to public hearing.

Chairperson Bowne asked staff to look over the applicants alternative plan.

Mr. Florea stated that this is all predicated on the applicants field measurements. Lacking a survey of the property and locating the buildings on there it is going to be difficult, we are talking about some pretty tight tolerances here. Without a survey it is going to be difficult to pin down how big of a variance the applicant is requesting. It also varies because the rear property line is at an angle and it is going to vary the distance.

Mr. Pauley stated that the reason he has the house sitting where it is at is to meet the 100-foot setback from the lagoon.

Member F. Thomas stated that the property should probably be surveyed to really know what is going on.

Mr. Pauley stated that there is one survey marker at the corner of the property. All the applicant has to go off is corner posts on three corners of the property with fences attached. All of the measurements are coming off those fence posts so it is fairly close. The one fence down one side of the property on the east side of the property, it says the fence is 228-feet in the survey but it is actually 258-feet long.

Member M. Thomas stated that it is kind of hard to hang your hat on the fact that the railroad was built in the center of the easement.

Mr. Pauley stated that he doesn't have a way to measure that.

Member M. Thomas stated that in order to really be able to pin this down and say whether or not the house encroaches on the railroad easement the property should really be surveyed. If it does in fact encroach on

the railroad easement then the City of Columbia would rather it be moved. In the Boards best interest if it is going to be moved away from the railroad it might as well be moved to come in to compliance.

Mr. Pauley stated that it can't.

Member M. Thomas asked staff if a variance can be given on the distance of the lagoon.

Mr. Florea stated that the applicant has applied to the Health Department for a variance for the lagoon and that is to vary the setback from the property line. Whether or not they can vary the distance from the home to the lagoon is unknown by staff.

Chairperson Bowne asked the applicant how long he has owned the property.

Mr. Pauley stated 15 years.

Chairperson Bowne asked if the property was surveyed when the applicant purchased it.

Mr. Pauley stated that he has two old surveys.

Mr. Florea stated that there is an existing survey; there was a reference to a survey on the Assessors records.

Mr. Pauley stated that he has two surveys; one from 1956 and another from 1971. Mr. Pauley submitted copies of these to the Board.

Chairperson Bowne asked if there is an existing lagoon on the property.

Mr. Pauley stated no; there is a septic tank that was there when Mr. Pauley bought the property.

Chairperson Bowne asked what the property to the east is used for.

Mr. Pauley stated right now it is just a yard.

Chairperson Bowne asked if there is any reason why the applicant is putting the dwelling on the smaller corner of the property.

Mr. Pauley stated that there is no way to come close to setbacks for the lagoon on the other property.

Member M. Thomas stated that he believes that the setback for a lagoon is 75 foot from the property line and 100-feet from the dwelling it serves.

Mr. Yonke stated that those are Health Department requirements which is why it has to go to their Board.

Chairperson Bowne stated that there are a couple of things the Board is having problems with. One is that there is not a survey that tells you specifically whether the house is on the property or not. What is before the Board is the aerial that shows that the mobile home is encroaching on the property line. Chairperson Bowne stated that she doesn't believe that the Board can grant a variance to leave a home that encroaches on a property line.

Mr. Pauley stated that he can show the Board a fence on the aerial photograph that is 50-feet from the railroad tracks.

Chairperson Bowne asked if that was the railroads fence.

Mr. Pauley stated that the fence was there when he bought the property.

Chairperson Bowne stated that is the first thing that is a problem because of the lines and granted that these lines come with a disclaimer from the Assessor's Office that says they may or not be exactly where they are supposed to be.

Mr. Pauley stated that according to his measurements they are not.

Chairperson Bowne stated that we are back to without a survey we are hung up.

Mr. Pauley stated that he checked in to doing a survey and it would cost \$1500 which is not a big deal. What the big deal is when he started this project he called to see what it was going to take and he was told that as long as he is replacing the house and putting the new one right back where the old one is it wouldn't be a problem.

Chairperson Bowne asked who the applicant called.

Mr. Pauley stated he called Planning and Zoning. Mr. Pauley stated that he tore up his property. The part that is supposedly encroaching on the railroad is not there, it is tore down getting ready for the new house. The applicant already has his loans, the construction loan is done and he has 120 days on the construction loan to be finalized for the new loan for the final mortgage and the applicant is already three weeks in to that and the applicant is running out of time.

Chairperson Bowne stated that she likes the idea of moving it to an alternative location because even if it is six feet, six feet is a 19-foot variance, that is a big variance for the Board to grant. The Board usually does not grant those quite that far unless it is for a permanent, existing structure. A mobile home is not a permanent, existing structure.

Mr. Pauley stated that the new home is a modular.

Chairperson Bowne agreed that the new one is a modular so now that we are in to a different situation where we could, with a new home, move it back. The Board understands that the applicant has some problems and it may still require a variance but it would be in a better situation than granting a 19-foot variance.

Member M. Thomas stated that the alternate plan showed 20-feet. Member M. Thomas stated that he felt better about that.

Chairperson Bowne stated that would just be a five foot variance.

Mr. Florea stated that if there is eventually a motion to approve the Board could put a condition on the approval requiring a survey of the property so we can verify in the field the location of the building in relation to the property line so we know we are complying with the Board's decision.

Chairperson Bowne asked staff if they had any responses from the public.

Mr. Florea stated that staff received approximately 8 phone calls.

Member F. Thomas if anyone registered an objection.

Mr. Yonke stated the callers did not object to the new home being placed in the exact same location.

Mr. Florea stated that the request was to put the new home in the place of the existing mobile home. Staff did not receive any objections to that.

Chairperson Bowne stated that she believes that the Board can not grant in that case since it was not published that way. The neighbors were not notified of a possibility of putting it in a different location.

Mr. Florea stated that as long as the front setback is not varied Mr. Pauley could put his structure right up to the 25-foot building line without approval by the Board if it was a smaller structure. The applicant is purchasing a 32-foot wide home. If the applicant were to put a singlewide there he would ample room to put a singlewide structure there without varying any of the setbacks. To go with the second scenario of moving the structure up to meet the front property line and granting a 5-foot variance rather than a 19-foot variance the Board would be approving less than what was requested. Staff does not think that notice would be affected by that.

Member M. Thomas made a motion that the variance is granted on his relocation condition. With a condition that there is a survey performed to locate the new structure so we know it will be in compliance with the variance.

Mr. Florea stated that he assumes that to mean that the structure should match the 25-foot setback.

Member M. Thomas stated that is correct.

Chairperson Bowne stated that would be a 25-foot setback on the front.

Mr. Florea stated that according to Mr. Pauley's drawing it would be 20-foot setback on the back but we don't know that until we see the survey. But the applicant will maximize the rear yard up to the 25-foot minimum.

Member Hatfield stated that if the Board goes with the applicants alternative it would seem that it meets code.

Member M. Thomas stated except on the rear setback. The rear setback is still a 25-foot.

Member Hatfield stated that the applicant is better off meeting code with the new home.

Member F. Thomas seconded the motion.

Chairperson Bowne stated that the motion is to grant a variance for a relocated structure and to locate the new structure in compliance with the 25-foot front setback and to maximize the back yard and minimize the encroachment on the back setback provided that there is a survey done.

Mr. Pauley stated that he has it drawn perfectly straight with the front property line. Mr. Pauley asked if it was possible for him to angle the home so it is a little closer to the shop.

Mr. Florea stated that as long as the applicant doesn't cross the front setback it can be angled back. According to the way the motion has been worded the applicant would have to be parallel to the rear property line so the applicant is maximizes the rear setback.

Member M. Thomas made and Member F. Thomas seconded a motion to **approve** a request by Rodney Pauley for a variance from the setback regulations in the A-R district for a 1.02 acre tract located at 10551 E Kroeger Rd., Centralia. (**Zoning Regulations, Section 10 A.**) subject to the following conditions:

- The new home must be located so as to minimize the encroachment on the rear setback area. (this requires the home to be set to the front setback line). This condition should not be construed so as to prevent the home from being located parallel to the rear property line.
- The owner shall provide a survey locating the home on the lot demonstrating compliance with the previous condition. The survey shall be provided prior to the footing inspection for the new home.

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

Motion to approve request carries. 4 Yes 0 No

Chairperson Bowne stated that the motion to approve the request for a relocated structure has been granted. Chairperson Bowne asked Mr. Florea to inform Mr. Pauley what restrictions that will put on him as far as meeting this variance request and when he has to have the survey done as opposed to finalizing his construction.

Mr. Florea informed the applicant that he would have to have his survey done prior to a footing inspection so staff can verify the setbacks are met before the footings are poured.

5. Case Number 2004-006

Request by Mary Davila-Aponte for a variance from the front setback requirements for a commercial structure located 8700 I-70 Dr. SE, Columbia. (**Subdivision Regulations, Appendix B. 1.8.2**)

Planner Thad Yonke gave the staff report stating that the current zoning is C-G, the adjacent zoning is also C-G. The tract is located on the southwest corner of I-70 and Route Z interchange. There is an older single family dwelling on the site that has been converted to commercial use along with an outbuilding. The applicant would like to split the property through the subdivision process and the existing structure is situated in the required front setback area. The original zoning for this tract is C-G. The requested variance is from the subdivision regulations appendix B.1.8.2 which requires that a 50-foot building line be provided on lots that abut a State road. Staff notified 18 property owners.

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 building on the property that pre-dates county zoning and subdivision regulations. Appendix B, Section 1.8.2 requires a 50-foot building line adjacent to state highways. The building extends in to 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 structure to be moved so that the land can be subdivided.
- b) Granting this variance will not endanger the health, safety or welfare of the public; the building has been in place for at least 40 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.

Staff recommends this variance be granted.

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

Mr. Yonke stated no.

Present: Pat Carl, property manager, 2975 S. Rangeline Road, Columbia
Ron Lueck, surveyor and agent for Ms. Davila-Aponte, 300 St. James St., Columbia.

Mr. Lueck stated that the property that is being platted in to two lots. It was originally a 20-acre tract and it fronted up on Old Highway 40 which is now the north outer road. I-70 came through and took a big chunk for their development through the property and they took it in two pieces, the second step being taken enough for the outer road. It amounts to 8 acres being taken out of this property. What you are left with is the right of way line that is there now that runs about 6-feet off the porch of the house. It runs 11-feet off the house. This is something that was caused by the highway right of way. The applicants are applying for a variance so this can continue through the platting process with the 50-foot building line showing the house grandfathered in front of it.

Open to public hearing.

Present speaking in favor:

Bill Teeder, 305 Cumberland Rd., Columbia.

Mr. Teeder stated that he and his wife own property at 8300 I-70 Drive SE and is neither in favor of or in opposition to the request but just wants to know what the applicants are proposing. Mr. Teeder stated that he probably doesn't have a problem with what the applicants want to do but would just like to know what is proposed. Mr. Teeder wonders if the applicants know the long term plans from MoDot is to move I-70 Drive SE and basically go behind the applicants building. That is the proposal that was presented to the neighbors out that way.

Chairperson Bowne stated that the request before this Board really does not deal with what the applicants want to do with the land except that they are in the replatting process and in order to replat due to the fact the existing building does not meet the setback requirement and that is the only thing that is before this Board which is to ask a variance for the existing building so the applicants can replat. Anything that the applicants propose down the road as far as what they want to do with it at that point if they require any additional rezoning or conditional use permits it goes before another board. Mr. Teeder may get some answers to some of his questions if he listens to the applicants but it is not required that the applicants tell

the Board that. The applicants request is for a variance for the existing building as part of the replatting process just so the applicants can move on.

No one spoke in opposition to the request.

Closed to public hearing.

Chairperson Bowne stated that the applicants submitted a copy of Carl's subdivision preliminary drawings.

Member M. Thomas stated that he assumes the existing structure is not going to be altered. The applicants want the structure to remain where it is. Any condition that is put on the variance will say that any additions made to the house have to be well outside of the setback.

Ms. Carl stated that the building will stay as it is.

Mr. Lueck stated that there are no plans at this time on building.

Mr. Yonke stated that it is within the Board's purvue to indicate that any new construction on the property is not getting a variance to be within the 50-feet.

Mr. Lueck stated that the applicants are aware of MoDot's plan. They have no plans written up for increasing the straightness of the curve for the outer road connection. They haven't got a plan drawn up for anything but it's just a general idea of what they want to do.

Chairperson Bowne stated that she agrees that any variance granted for the existing structure would be for the existing structure as is where is. If it should become damaged and need extensive remodeling and the applicants would rebuild then it would have to meet the setback requirements. Anything the applicants add on to the house would have to meet the setback requirements and could not be added on within the setback area.

Member M. Thomas made a motion to grant a variance for the existing structure as is where is and if any modifications are to be made to the building by cause of destruction or any other modifications they become in compliance to the setback requirement.

Member F. Thomas seconded the motion

Member M. Thomas made and Member F. Thomas seconded a motion to **approve** a request by Mary Davila-Aponte for a variance from the front setback requirements to allow an existing structure to remain in the front setback area at 8700 I-70 Dr. SE, Columbia. (**Subdivision Regulations, Appendix B. 1.8.2**) subject to the following conditions:

- No exterior additions to the structure area allowed.
- The variance applies to the existing structure only.
- If the existing structure is damaged to the extent of 75% of the actual value of the building immediately prior to the damage, it must be rebuilt in full compliance to the setback regulations.

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

Motion to approve request carries. 4 Yes 0 No

NEW BUSINESS

None.

OLD BUSINESS

None.

ADJOURN

Meeting adjourned at 7:50 p.m.

Respectfully Submitted,

Paula L Evans
Secretary

Minutes approved this 22nd day of July 2004.