

## **BOONE COUNTY BOARD OF ADJUSTMENT**

**BOONE COUNTY GOVERNMENT CENTER**

**801 E. WALNUT ST., COLUMBIA, MO.**

**Thursday, February 24, 2005**

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  
Gregory Bier

Absent: William Hatfield  
Frank Thomas

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

Minutes of the January 27, 2005 meeting were approved with no corrections.

### **REQUEST**

1. Case Number 2005-002

Request by Robert Berendzen for a variance from the required front setback for an existing house located at 20250 N Hwy 63, Sturgeon. (Subdivision Regulations, Appendix B 1.8.2)

Planner, Thad Yonke gave the staff report stating that this property is zoned A-2 as is the adjacent property. The site is located on the east side of Highway 63 just north of the Highway NN intersection, approximately 4 miles southwest of Sturgeon. There is a single family dwelling on the property. The applicant wants to subdivide this tract resulting in the house being situated within the required 50-foot setback. The original zoning for this tract is A-2. There have been no previous requests submitted for the property. The requested variance is from subdivision regulations, appendix B 1.8.2 which requires a 50-foot building line when lots abut a state road.

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 he owns. There is an existing house on the property. Appendix B, Section 1.8.2 requires a 50-foot building line adjacent to state highways. The existing house intrudes in to the setback area.

- a.) The applicant will incur unreasonable and unnecessary hardship if this variance is not granted; it would be impractical to require the existing house to be moved.
- b.) Granting this variance will not endanger the health, safety or welfare of the public; the existing house has been in place for several years and will not pose a threat to the public. The centerline of Highway 63 is approximately 300 feet away.
- c.) Granting this variance will not thwart or circumvent the general intent of the regulations.

Staff recommends this variance be granted.

Present: Robert Berendzen, 20250 N. Hwy 63, Sturgeon.

Chairperson Bowne asked the applicant to explain why he needed the variance and how it came about.

Mr. Berendzen stated that he is dividing the property because he is wanting to sell it. The applicants need to sell this piece off separately. In the platting process the applicants found that the home is not as far back off the setbacks as they assumed it was.

Open to public hearing.

Present speaking in favor of the request:

Jim Patchett, surveyor, 1206 Business Loop 70 W, Columbia.

Mr. Patchett stated that this is a pretty unusual right of way that the highway department has there. It enters the property at an angle and then it is on a long curve. When you are standing out there it is really difficult

to tell where that right of way is located unless someone puts a stake in there about every 100-feet, then you would be able to see a long curve. Mr. Patchett stated that he doesn't remember how long this curve is but it is several hundred feet. That was probably part of the reason that this house ended up being there, plus it is a right of way that will be for an interchange that will probably be a long time before it is ever built. It is a pretty unusual right of way situation. The house is actually a long way from Highway 63. They took a lot of right of way for the interchange.

Chairperson Bowne asked Mr. Patchett if he was the surveyor now or when the house was built.

Mr. Patchett stated now.

Chairperson Bowne asked how far that house is from the building line.

Mr. Patchett stated that the closest corner is 23 1/2- feet.

Present speaking in opposition to the request:

Robert Bynum, 19800 Highway 63 N, Sturgeon.

Mr. Bynum stated that he owns the adjacent property. Mr. Bynum stated that the structure that is being discussed is classified as a house and originally that house was built as a daycare, not as a house. Mr. Bynum stated that he doesn't understand why Mr. Berendzen is being allowed to subdivide that piece of property with two houses. Mr. Bynum stated that he was under the impression that in Boone County you are not supposed to have two houses on one piece of property less than 10-acres. Mr. Bynum stated that he doesn't know the rules and regulations but he is asking the Board to carefully review this rather than just taking it for what is stated. Mr. Bynum stated that his concern is that Mr. Berendzen is quite knowledgeable, being in the construction business of the rules and regulations regarding Planning and Zoning for Boone County. A variance allowing him to be 23-feet away from the property line when it should be 50-feet is unacceptable. Mr. Bynum asked why there are two houses on this piece of property to be platted in the first place and second why should the applicant be granted a variance when he is quite knowledgeable about the rules and regulations of Boone County Planning and Zoning. The applicant could have asked for stakes just like Mr. Bynum did. All the applicant had to do was ask MoDOT and they would have come out and staked it for him. The applicant has made some poor judgment decisions and it isn't acceptable.

Closed to public hearing.

Chairperson Bowne asked staff to address the issue of two structures on the property and the size that is required.

Mr. Yonke stated that first, regarding phone calls, staff received one phone call in opposition but staff believes that was Mr. Bynum who called.

Mr. Yonke stated that there are actually three structures on the property and a lagoon that are currently on the parent tract which appears to be about 9 acres. The building permit that was taken out for what was marked as the house on lot 1 was actually taken out for an accessory structure for a daycare. It was not taken out as a house; because on a single tract of ground less than 20 acres you are generally not allowed to have two houses on a single piece of property. You can have a house and outbuildings but you can't have two primary uses which are two houses. As far as the dividing goes, normally when things have a problem and we find that someone has built two houses on one piece of ground and it is capable to be divided, one of the ways to remedy the situation is to make the property owner divide it so that you end up with two separate pieces of ground, each of which has one house on it. That is one of the remedies rather than

coming to the Board of Adjustment that people are required to do if their ground can be platted if they meet those requirements.

Mr. Yonke stated that the application indicates that it is a house and the subdivision plat indicates it is a house. After staff received the phone call we started looking at the building permit information so it is unclear at what point it changed because technically it is not legally able to be a house. The building permit information, which is part of the record of these proceedings, indicates that the building department wrote the permit off as an "as-is", it was not finalized and there were some issues on it but it was done as an accessory structure. That is going to bring up some other issues in terms of the fact that if you plat a piece of ground less than 5 acres with an accessory structure on it then it would be back before the board for an accessory structure without a primary structure as another variance that is required.

Chairperson Bowne asked when the building permit was issued.

Mr. Yonke stated that the permit was applied for in October 2001. The indication on the original building permit is that the front property line setback was 50-feet.

Chairperson Bowne asked about the other house on the property.

Mr. Yonke stated that the other house is further back. Mr. Yonke stated that he doesn't know when it was built.

Chairperson Bowne asked if there was a building permit on that house.

Mr. Yonke stated that he didn't look at records for that structure.

Chairperson Bowne asked if the other house was built after October 2001.

Mr. Yonke stated yes. Staff wrote the staff report based on the initial application prior to staff getting any of the other information.

Chairperson Bowne stated, in regard to the building permit, did the building meet the requirements for a house.

Mr. Yonke stated no; that in every structure is supposed to have a final occupancy permit, no occupancy permit was issued for this structure.

Chairperson Bowne asked Mr. Berendzen to address the issues that have come up.

Mr. Berendzen stated that on the first issue of getting the property lines marked; the applicant did get this done by the state. Mr. Berendzen stated that he doesn't know where the interference came from; it is in meters and when the guys came out to mark they had a very hard time with it; going from American English to the metric. The applicants had it marked and pulled a tape with the inspector and were back 50-feet at that time. What has happened on that radius since then the applicant doesn't know. They are saying now that they are not in the required setback. Mr. Berendzen stated that he was there and knows what happened then and knows what they are saying now, what has happened in between he doesn't know. Mr. Berendzen stated that the applicant thought he was off the building line 50-feet; it was even marked by the state.

Mr. Berendzen stated on the building permit; yes it was built as a daycare, it was run as a daycare, the daycare did not make it so the applicants quit the daycare business. The applicant pulled a permit as an accessory building, because that is what it was, for a daycare and the applicants had to go through all the

steps of inspections, like a home, but it was an accessory building. The applicants went through all those steps. At the very end, there was a couple minor things that did not pass like porch posts being secured and something else, anyway, the applicants did not get a final inspection. The applicants had all other inspections as they were supposed to.

Chairperson Bowne asked if the applicants are now living in the house.

Mr. Berendzen stated no.

Chairperson Bowne asked how many parcels the applicant is wanting to divide in to.

Mr. Berendzen stated two.

Chairperson Bowne asked staff if there was a drawing of the property.

Mr. Yonke presented a copy of the plat.

Member M. Thomas asked staff if the applicant would be able to re-open a permit and have the building re-inspected as a residence.

Mr. Yonke stated not if it is one piece of ground.

Mr. M. Thomas asked if the variance was to go through could the applicant then pull a permit.

Mr. Yonke stated that if the variance when through to allow it to be platted in to two separate pieces then a building permit could be taken out either by Mr. Berendzen or a new owner to modify the structure in to a single family residence and it could go back through and finalize the code issues and theoretically it could become a single family residence. As one piece of ground we can not issue a building permit to do that. That is not addressing the other issue which is if it is an accessory structure you technically need a variance to have an accessory structure platted on a lot where any lot is less than 5 acres without a primary structure. That is another variance that should have been requested. Staff would have added that on the notice but staff thought it was a house.

Chairperson Bowne stated that at the time Highway 63 went it; it was all established before the applicant built. They had the right of way markers up for quite some time; some of the markers probably went down as they went and they could be replaced. Meters to feet; you can't make a mistake of 20 plus feet meters to feet; Chairperson Bowne stated that she wont go for that; even people who are poor at math can't make a mistake that bad. The issue of the interchange not being built for many years; that may be true, it may not be true. Chairperson Bowne stated that she has seen the plans and has heard the prognosis for that interchange and at one moment it could happen at anytime and the next year it is not on the immediate plans. The structure was built in 2001; it should last for 20 to 40 years if it was built correctly without any structural problems; that interchange will happen in that amount of time. This building is not the applicants home; it is not their primary residence, it is an accessory building. If the applicants want to sell the property they can sell all 10.6 acres without any problem; it is not preventing the applicants from selling the property. It is a problem if the applicants just want to divide part of it off. Chairperson Bowne stated that she doesn't see that as a major hardship. It will prevent the applicants from selling off 2.5 acres or any acreage that would meet that zoning requirement there. But this is not a major hardship to the applicant, it is an accessory building, it is not a big deal.

Mr. Berendzen stated that it is a major hardship to him for the amount of money that is in the accessory building to be able to subdivide. There is probably \$50,000 in this building. To sell this piece of property

as one piece the applicant has to have \$50,000 more for the house. No one wants to give that much for the square footage that is in the house and the amount of land.

Chairperson Bowne stated that it is not a primary dwelling, it was not built as a primary dwelling; it won't meet the requirements as is as a primary dwelling. Chairperson Bowne stated that she sees it as a very expensive accessory building. But it is still not a primary dwelling. Chairperson Bowne stated that she doesn't want to get in to this domino effect of granting a variance so that the applicant can sell it and subdivide it off so the next person can come in and ask for a variance to live in it and we get down the road and the highway can come through and take the building out. Chairperson Bowne stated that she didn't want to do that. Whenever you build you have to make sure you are in the building line when you are on highway 63; it is a tough lesson to learn but that is the lesson here, you have to stay outside of that setback on a road of this size.

Member M. Thomas stated that it is true, this is not a primary residence. If the applicant wants to bring it before the Board again the applicant would have to modify the request. As the request is right now Member Thomas can not support the request simply because it is not a residence, it is an accessory building. The applicant could make it a residence and bring it back before the Board with both variances.

Mr. Yonke stated that there is a problem with that in that if the variance isn't granted for the position of this building the only way this property can be divided to have the plat go through to allow for the permit to be taken out for the building to be converted would be if the building was removed. Which would remove the need for a variance because it would be a vacant 2 ½ acre tract which would eliminate the need for a variance. The problem is that the applicant can't go forward with the plat because it is not in compliance with the regulations to divide it; we can not issue a permit to change that type of use unless it is divided. We are stuck with the fact that if the variance is not granted the only real option is to remove the building if the property is going to be divided or sell the whole piece as is or leave it the way it is. Those are the only three options.

Chairperson Bowne stated that if the whole property is sold the building can stay where it is without a problem.

Mr. Yonke stated that it still should have been 50-feet back.

Chairperson Bowne stated that is correct but that is outside of anything we are looking at here.

Mr. Yonke stated that there is no event that would trigger that at this point in time staff probably wouldn't deal with that issue. It is the fact that we have a plat in front of us that is causing this issue at this time.

Member M. Thomas made and Member Bier seconded a motion to deny a request by Robert Berendzen for a variance from the required front setback for an existing house located at 20250 N Hwy 63, Sturgeon. (Subdivision Regulations, Appendix B 1.8.2):

Chairperson Bowne	Yes	Member M. Thomas	Yes
Member Bier	Yes		

Motion to deny request carries.                      3 Yes                      0 No

Variance not granted.

\* \* \* \* \*

**OLD BUSINESS**

Certificate of Decision - DeYoung

The certificate of decision for the DeYoung request was entered in to the record.

Chairperson Bowne signed the Certificate of Decision.

**NEW BUSINESS**

“As is, where is”. Definition

The existing building maintain the same location, footprint, and square footage. If the existing building has been damaged, by any cause, equal to more than seventy-five percent of the actual value of the structure immediately prior to the damage, then any replacement structure must be built in compliance with the required setback.

Member M. Thomas made and Member Bier seconded a motion to **accept** the above definition of “as is, where is”

Motion passes by acclamation.

Mr. Florea informed the Board that anytime the term as is, where is happens to be made a condition of approval for a variance, the above definition will be inserted in to the record.

**ADJOURN**

Meeting adjourned at 7:35 p.m.

Respectfully Submitted,

Paula L Evans  
Secretary

Minutes approved this 24th day of March 24 2005.