

BOONE COUNTY BOARD OF ADJUSTMENT

BOONE COUNTY GOVERNMENT CENTER

801 E. WALNUT ST., COLUMBIA, MO.

Thursday, June 23, 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
Frank Thomas
William Hatfield

Absent: Gregory Bier

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

Minutes of the April 28, 2005 meeting were approved with one correction regarding the date of the approval of the minutes.

REQUEST

1. Case Number 2005-006

Variance request by Adam Wolf to allow an existing house to remain within the proposed front setback and an existing garage within the front setback and the utility easement on 14.28 acres located at 5000 S Brushwood Lake Rd., Columbia (**Subdivision Regulations, Appendix B 2.2 and 7.1**)

Planner Bill Florea gave the staff report stating that section 1.9.2 of the Subdivision Regulations requires that the Director make a recommendation on requests for variance from the provisions of the regulations.

“The Board may grant a variance only if it finds after public hearing and upon competent and substantial evidence that the applicant meets the criteria for grant of a variance required by these regulations. No variance from any requirement contained within Appendix A or B of these regulations shall be granted unless the Board finds: (a) the applicant will incur unreasonable and unnecessary hardship if a variance is not granted and the variance is not sought primarily to avoid financial expense in complying with the requirements of these regulations (b) grant of a variance will not endanger the health, safety or welfare of the public, and (c) grant of a variance will not hinder, thwart or circumvent the general intent or any specific purpose of these regulations. All applications for variances shall be filed with the Director and after review thereof the Director shall make a recommendation to the Board to grant or deny the application and state the reasons for his recommendation.”

The applicant would like to plat the 14.42 acres that he owns. There is an existing house and a detached garage on the property. As part of the platting process, the applicant will be required to dedicate a 33-foot half-width right-of-way along Brushwood Lake Rd. The property is zoned A-2, which requires a 50-foot front setback. Both the garage and the house require a variance from the Zoning Regulations, Section 10, as the house will be 43.25-feet from the property line and the garage will be 1.75-feet from the property line. The staff does not make a recommendation for or against requests for a variance from the zoning regulations.

The Subdivision Regulations, Appendix B 7.1 requires that a minimum 10-foot wide utility easement be provided along all public roads. The existing detached garage lies within the area that will be required for the utility easement.

This request contains three separate variances

- Variance from the Zoning Regulations Section 10 to allow the house to remain in the front setback
 - Variance from the Zoning Regulations Section 10 to allow the garage to remain in the front setback
 - Variance from the Subdivision Regulations Appendix B 7.1 to allow the garage to remain in the utility easement.
- a) While it would appear that it may be unreasonable to require the removal of a structure from the area required for a proposed utility easement, it should be noted that the structure in question is an accessory structure, not a residence. Requiring the garage to be moved or removed does not deprive the owner of the primary use of the property, which is residential and therefore does not create a hardship. The applicant has indicated that the reason he is making the request is so that he can subdivide this 14.42 acre tract, along with the adjoining 14.42 acre tract, into smaller lots. Staff has attended a concept review concerning the eastern portion of these two tracts that was focused on developing the eastern part of the tracts as an extension of Thornbrook subdivision. Staff research indicates that the garage appears to have been built prior to the adoption of zoning and subdivision

regulations in 1973. Staff recognizes that many structures serve useful purposes for periods in excess of 30 years, but the residual value of a small accessory structure of that age is questionable.

- b) Granting this variance may endanger the health, safety or welfare of the public. The existing house and garage have been in place for some time; however, Brushwood Lake Road is designated as a collector road on the Columbia / Boone County Major Thoroughfare Plan. Staff is aware of another development proposed to the south of this property that will generate additional traffic on this road. As a designated collector road, this road will likely be improved in the near future. An accessory structure located so close to the road could be a hazard.
- c) Granting this variance will thwart or circumvent the general intent of the regulations. The intent of the regulations is to make sure that utility providers are able to locate services in areas that are relatively free from obstruction. The development pressure being experienced in this area is certain to increase. Additional development will require improvements to the existing utility services. Providing utility easements in clearly defined locations without encroachments will allow the utility providers to more efficiently serve the area.

Staff recommends that the variance to allow the garage at 5000 S Brushwood Lake Road to remain within a proposed utility easement be denied.

Present: Adam Wolf, 5016 Brushwood Lake, Columbia.
Gene Basinger, surveyor, 300 St. James St., Columbia.

Mr. Basinger stated that as staff has said Mr. Wolf has purchased 2 tracts of land here each being 14.42 acres, it was originally one family tract of land. Each tract has a home on it; the tract in question has an older home and a garage. The tract to the south has a newer home and shop/garage, the buildings south are not a problem as far as setbacks and easements are concerned. One of the reasons Mr. Wolf purchased the property was he had an agreement with the developer that if he could buy the property, which was what he wanted to do, the developer would buy the back 20 plus acres and do an extension of Thornbrook subdivision in there. The reason we are here asking for this and the reason we are platting this is that Mr. Wolf desires to cut off the back part of the property and sell it to the developer. They are basically waiting for Mr. Wolf to get this through the process. He is going to use the older home, which is the one in question, as rental property, which is what it is being used for now, the other home is going to be his residence and the rest will be sold off to the developer. The problem we have is time constraint, Mr. Wolf really needs to get rid of the back part of this property to get out from under the debt load. That was the problem to start with; he knew he couldn't swing the whole thing and keep it. The problem we have here is time line. We could just forget this and wait and annex the whole thing in the city and deal with everything in the city. Mr. Basinger doesn't know in that point in time what would be the situation with the garage and the house in the city. We are here trying to just plat off two smaller tracts. There is a creek that runs behind these houses and basically the creek is going to be the property line. Really what we are doing is combining these two tracts of land and re-dividing each one of the houses off on the front then the back will be separately sold to the developer. In this request the house obviously will sit over the building line. The garage that ends up sitting up out close to the property line, the road right of way line, unfortunately it is a pretty nice structure. Mr. Basinger stated he didn't know what the age of the building is. The house is older it is probably 60 plus years old. Mr. Basinger stated that the garage is doing okay there today, it is not bothering anybody. If they come through and want to build a road or improve that road then at that time they, whoever is going to build the road, will probably require the garage to be taken down. From the applicants standpoint the garage is not a problem today and the only thing the applicants are doing are changing a line on paper and on the ground. The building is not going anywhere, it is a nice building it seems kind of unreasonable to just tear a building down just because of what we are trying to do here when probably if we took it through the city the applicants might or might not have to deal with it.

Mr. Basinger asked staff if the applicants needed to deal with the lagoon situation here.

Mr. Florea stated that is a health department issue.

Mr. Basinger stated from a surveying standpoint and from a practical standpoint that is the way the applicants feel. It is kind of like the building line, the house is going to be over the building line, is that really going to cause a problem? Kind of like is the garage going to cause a problem because it is over the easement line. Someday the garage will probably come down. There is probably not going to be any major subdivisions probably attaching to Brushwood Lake Road because it is all gravel all the way in to Scott Boulevard. There is a developer to the south of this property that is talking about developing and we are dealing with sewer with the City and the other developer to see what we can do about getting a sewer line that will run from their property all the way through this property and out to the trunk sewer. Otherwise this property here will need a lift station to lift it out. There will probably be City sewer coming through there in the future. If the applicants had the time and the pleasure and the leisure we would probably just do it all in the city and wouldn't have to deal with it. But the applicant needs to get out from under it, the developers want to get it so they can get in there and start working on it; neither one of them can do what they want until something takes place.

Mr. Wolf stated that he doesn't think it is hurting anything now; the building is not worth much, the one nice thing about it, the rental home is very small, it is an old home and very small, it is so small that they need storage. It helps to be able to rent the place if they have a place they can store stuff. The building is not much itself if something were to come up in the future bringing it down would not be a problem. Mr. Wolf's issue is you can put up a nice building for \$5000, Mr. Wolf is losing more than that a month in interest now. In the future if something came up and they needed the space taking it down would not be that big of an issue but it does help to keep the place rented because they have a place to store their stuff.

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 response from the public.

Mr. Florea stated no.

Member M. Thomas stated that he would like to note that he is a City employee and he has noticed that this has been sort of reviewed by the City however this is the first time Mr. Thomas has seen this. Once this packet came in to the mail it is the first time he has been exposed to this at all. Member M. Thomas stated that he didn't believe his employment with the City will in any way change his assessment.

Chairperson Bowne stated that this will be broken up in to three separate issues. Chairperson Bowne asked when Mr. Wolf purchased this property.

Mr. Wolf stated a month or two ago; possibly the 19th of May.

Chairperson Bowne stated they had a concept review on this on June 1st and the staff had included a copy of that drawing from the concept review. Chairperson Bowne asked Mr. Wolf if he has seen the drawing.

Mr. Yonke stated it was a City concept review.

Chairperson Bowne asked Mr. Wolf if he has seen this drawing.

Mr. Basinger stated that he prepared the drawing.

Chairperson Bowne asked when Mr. Wolf purchased the property was he aware of the 33-foot setback; was he aware that the purchased house was sitting on a proposed building line? Was he aware that the garage was too close to the road?

Mr. Wolf stated no.

Chairperson Bowne asked Mr. Wolf when he purchased the property did he know that he had the potential to sell this to the developer.

Mr. Wolf stated that he knew it was a valuable piece of property because of where it sits. He knew to get his hands on it. Mr. Wolf stated he has never done anything like this before.

Chairperson Bowne asked if the applicant knew Thornbrook was developed.

Mr. Wolf stated yes he did. He knew this was a valuable piece of property.

Chairperson Bowne stated that the drawing the Board has shows lots drawn on to the property that the applicant lives on and the rental property. That is part of the drawing that Mr. Basinger gave the Board.

Mr. Basinger stated he didn't know what the point was.

Chairperson Bowne stated that she wanted to make sure Mr. Wolf was aware that whenever he bought the property that he had the potential of platting it and selling it to the developer.

Mr. Basinger stated yes; but Mr. Wolf is not the one who is going to plat it. This was a concept review for the City to see what kind of problems we had before all this took place because he didn't want to purchase something that the developer couldn't do anything with. The developer wanted to buy it and Mr. Wolf wanted to sell it that is why Mr. Basinger got involved with the surveying and he had already said that he wanted to keep everything from the creek to the west. As long as we left 20 acres or more to the east side of the creek for the developer. Mr. Wolf knew about it Mr. Basinger created the concept review; the concept review is not for Mr. Wolf, he is not going to divide the land up; he is going to sell it as one chunk of land.

Chairperson Bowne stated that she just asked if Mr. Wolf was aware of that. In other words if Chairperson Bowne was aware of it that would have been part of the incentive to buy the property. Chairperson Bowne assumes that was part of Mr. Wolf's incentive to buy the property.

Mr. Wolf stated yes.

Chairperson Bowne asked how many acres will be left from the creek on this particular tract, the north tract that has the rental house that we are looking at, how many acres will be left whenever it is divided off.

Mr. Basinger stated he didn't have an exact figure because that decision has not been made yet; it will probably be in the neighborhood of 3 acres, maybe 4 acres.

Chairperson Bowne stated that the Assessor's office lists that house on the tract we are looking at, as being built in 1922. The shed, Mr. Florea indicated it was prior to 1973, the date that the Assessor's office has on there appraised evaluation was 1975, it could have been remodeled at that time.

Mr. Basinger stated that he has no knowledge of the garage but he does know a little about the house. The parents passed away and the kids ended up with the land they divided it in half and one of the boys took the south half and built these homes on there, then the north half was the old home. The rest of the kids kept it and rented it out. Now the kids sold that and the other boy sold the south part.

Chairperson Bowne stated that the zoning regulations require a minimum of 10-foot utility easement; Chairperson Bowne stated she noticed everything in writing says a 20-foot easement, is that what is planned for Brushwood Lake Road?

Mr. Florea stated that the minimum is 10-foot; utility companies typically ask for a 20-foot easement. The way the subdivision regulations are written if they ask for a 20-foot easement that is what they have to have.

Chairperson Bowne asked when they would ask for that.

Mr. Florea stated at the time of subdivision when the subdivision plat is submitted to staff for review staff sends it out to the utility companies for them to review and they comment back, that is usually when they provide the comment that they want 20-foot rather than the 10-foot.

Member Hatfield asked on that utility easement what normally would go through there as a utility.

Mr. Florea stated any utility, it could possibly be water, sewer, cable, gas, electric, phone, any public utility.

Member Hatfield asked if the garage was a two car garage.

Mr. Wolf stated it is a one car garage.

Mr. Basinger stated he thinks it only has one garage door; it is two-car size.

Member Hatfield asked if it was possible to move the garage.

Mr. Wolf stated he didn't believe so; he doesn't know much about this. It has a concrete foundation on it. Mr. Wolf stated that he can't imagine it is a valuable shed but it does serve its purpose very nicely. As long as it is not hurting anything Mr. Wolf would like to keep it.

Chairperson Bowne stated that this request is three different issues. The first one that Chairperson Bowne would like to address would be the garage remaining in the utility easement.

Member M. Thomas made a motion to deny the request to allow the garage to remain in the utility easement the concerns being this request would make a utility easement virtually unusable. There is an easement there it goes to the garage and stops.

Chairperson Bowne stated she agrees. The potential to be able to move the garage is there especially since it is on a slab.

Mr. Wolf asked if that made it easier to move.

Chairperson Bowne stated yes, so that is an option. Even at 15-foot off the centerline that garage is too close to the road, it is on the top of the hill the only thing that saves someone from hitting the garage is the big tree out in front of it. At 15 feet the garage is way too close to the road. Chairperson Bowne stated she sees it as a hazard especially being at the crest of a hill. The applicant has stated that in the future if they wanted to put a utility through there but once the variance is granted then it puts it all back on the applicant's side that he had a variance

that it could sit there and they would have to go through a condemnation process. The other concern is that there is a driveway right across from the property, there is another private driveway across the road.

Mr. Wolf stated that he leases that for hunting.

Chairperson Bowne stated that people can turn around there and it is a hazard.

Member M. Thomas made and Member Hatfield seconded a motion to **deny** a request by Adam Wolf to allow an existing garage to remain within the utility easement on 14.28 acres located at 5000 S Brushwood Lake Rd., Columbia (Subdivision Regulations, Appendix B 2.2 and 7.1)

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

Motion to deny request carries. 4 Yes 0 No

Chairperson Bowne stated that we will move on to the issue of allowing the garage to remain in the front setback. The regulations say you can not have a structure within the front yard area. Since we looked at the issue of whether to move the garage we will look at the issue of can we let it remain in the front setback.

Member M. Thomas stated that if we can move the structure out of the utility easement why not move it the full 50-feet and get it out of the setback.

Member M. Thomas made and Member F. Thomas seconded a motion to **deny** a request by Adam Wolf to allow an existing garage to remain within the front setback on 14.28 acres located at 5000 S Brushwood Lake Rd., Columbia (Subdivision Regulations, Appendix B 2.2 and 7.1)

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

Motion to deny request carries. 4 Yes 0 No

Chairperson Bowne stated we will look at the house that is in the front setback which would be a 50-foot setback.

Member M. Thomas made and Member F. Thomas seconded a motion to **approve** a request by Adam Wolf to allow an existing house to remain within the proposed front setback on 14.28 acres located at 5000 S Brushwood Lake Rd., Columbia (Subdivision Regulations, Appendix B 2.2 and 7.1) **with the following condition:**

- **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.**

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

Motion to approve request carries. 4 Yes 0 No

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OLD BUSINESS

None.

NEW BUSINESS

None.

ADJOURN

Meeting adjourned at 7:40 p.m.

Respectfully Submitted,

Paula L Evans
Secretary

Minutes approved this 28th day of July, 2005.