

## BOONE COUNTY BOARD OF ADJUSTMENT

BOONE COUNTY GOVERNMENT CENTER

801 E. WALNUT ST., COLUMBIA, MO.

Thursday, July 28, 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  
Gregory Bier

Absent: William Hatfield

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

Minutes of the June 23, 2005 meeting were approved with no corrections.

## **REQUEST**

1. Case Number 2005-007

Variance request by Sondra Kay Taylor to allow an existing house to remain within the proposed front setback on 20.53 acres located at 7980 S High Point Ln., Columbia (**Zoning Regulations Section 10.**).

Planner, Thad Yonke gave the staff report stating that the current zoning is A-2 as is the adjacent zoning. This site is located on High Point Lane approximately one mile south of the Columbia municipal limits. There is a house and several outbuildings on this tract, the remainder of the tract is wooded. The applicant is in the process of platting this tract as a 7 acre and a 13 acre tract. Surveying the tract shows that the existing house does not conform to the 50 foot front setback as required by the zoning regulations. The original zoning for this area is A-2, there have been no previous requests submitted for this tract. The requested variance is from the zoning regulations Section 10, which requires a 50 foot front setback in the A-2 zoning district. Staff notified 22 property owners.

Chairperson Bowne asked staff if they heard from any of the property owners.

Mr. Yonke stated no.

Present: Richard Coffman, A Civil Group, 1010 Fay St., Columbia.

Mr. Coffman stated the reason the applicants come before the Board is that Mrs. Taylor has decided that she wishes to sell the back 13 acres of her property. In order to sell that 13 acres she has to final plat the 7 acres in front. By final platting this we have to impose a building line. With the imposed building line it will be 17 feet in to the front of the building line. This building is the old Basinet homestead, it has been around for about 150 years, it started out as a 2 room home and has been added on to. Now Mrs. Taylor is asking to sell her property so that she can use the money for retirement. The applicants ask that the Board grant this variance so Mrs. Taylor can move on and retire.

Open to public hearing.

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

Closed to public hearing.

Chairperson Bowne stated the house sits on High Point Lane and the applicant is dividing off the back of it. Where is the access to the back?

Mr. Coffman stated the back will be accessed from High Point Lane. The applicants have dedicated a 20-foot ingress/egress easement along the south portion of the property. Mr. Yanis already purchased the 40 acres to the north and he is looking to purchase the 13 acres in between so there will be access from that 40 acres as well.

Member M. Thomas made and Member Bier seconded a motion to **approve** a request by Sondra Kay Taylor to allow an existing house to remain within the proposed front setback on 20.53 acres located at 7980 S High Point Ln., Columbia (**Zoning Regulations Section 10.**) 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



- a.) The applicant will not incur unreasonable and unnecessary hardship if this variance is not granted; the applicant already has a platted lot that can be sold in its current configuration. Should a vacation of the original lot be approved by the County Commission a replat of the lot can be made larger and still comply with the regulations; it simply cannot be configured exactly as desired. There is no unique circumstance of the property qualifying as an unnecessary hardship in complying with the regulations.
- b.) Granting this variance will not endanger the health, safety or welfare of the public; the size of the replatted lot in Brittany Acres will not affect the health or safety of the public. The effect on the welfare of the public is that the requested variance will thwart the intent of the regulations and is covered in "c" below.
- c.) Granting this variance will thwart or circumvent the general intent of the regulations. There is no unique circumstance related to the land that makes it unable to meet the 3 to 1 ratio provision of the regulations. This provision is in the regulations to prevent long thin lots from being created as it is a wasteful means of dividing land. What is desired to be accomplished by the variance is exactly what the specific regulation prohibits.

Staff recommends that this variance be denied.

Chairperson Bowne asked if staff heard from any of the neighbors that were contacted.

Mr. Yonke stated that staff received a call in opposition to the request.

Staff also indicated that a neighbor came to the Planning office and indicated that they didn't have any objection to the variance that was being requested but the neighbor did have a concern that a second home would be built on the property in question.

Present: Noah Earle, purchaser, 3408 Valencia Dr., Columbia.

Mr. Earle stated that the applicants are asking for this variance on the grounds that should the adjacent property to the north come in to the hands of someone else the applicants would like to avoid building there in the future and also the possibility of any waste being dumped there. As it stands, the "L" shaped configuration will be relatively useless to anyone who owns the land to the north. It might not be an efficient shape for the land but if the variance isn't granted it would be illogical in the applicant's opinion. Mr. Earle stated he spoke with several of the neighbors who own contiguous parcels and they have a petition that was signed by three neighbors.

Mr. Earle presented the petition to the Board.

Chairperson Bowne read the petition in to the record. The petition was signed by Cliff Robb, Misty Robb, and Sydney Baumgartner.

Open to public hearing.

Present speaking in favor of the request:

James Baskett, 10284 Hwy OO, Hallsville.

Mr. Baskett stated that Mr. Earle purchased tract 1 of Brittany Acres but he wants more land. The land is not going to be that important to Mr. Baskett and his wife. Mr. Baskett would like to have this done. There is no other way that any more homes could be built in there because they are locked in on his side with 10

acres and Mr. Earle has the 5 acres. The only other one would be the one to the south, Mr. Phillips and he won't let someone put a road on his property.

Chairperson Bowne asked Mr. Baskett if he currently owns the land Mr. Earle wants to add to his property.

Mr. Baskett stated yes. The land is more beneficial to Mr. Earle than it is to Mr. Baskett. Mr. Baskett stated that he has a few llamas and some miniature sheep and about half of it is in woods.

No one spoke in opposition to the request.

Closed to public hearing.

Member M. Thomas asked how the width of the lot is determined.

Mr. Yonke explained how the width is calculated.

Mr. Yonke stated that there is a plat for this property.

Mr. Earle stated that what would be left back behind would be even more strangely shaped and useless to whoever owns it. It would be a smaller strip and not worth much other than dumping appliances.

Chairperson Bowne asked if Mr. Baskett's land was in the subdivision and it goes the same full length as Mr. Earle's land would be but his is in the subdivision

Mr. Yonke stated that Mr. Baskett originally had the 20 acres, platted the 5 out which is in the subdivision and the remainder wraps around in an L shape. If the variance is granted then you've got a replat there, assuming the vacation gets approved, both lots need the 3:1 variance as proposed there because what is proposed there is actually 2 lots, both of which have to be platted; neither of which will meet the 3:1 ratio. If the Board grants the variance we would consider it to be for both lots or for none because they are tied together. What we were originally told was variance for 3:1 on the first one and if you kept it to where the top one was over 10 acres it could be done by an administrative survey rather than a plat. If it is done by and administrative survey the 3:1 ratio doesn't apply but if it drops below 10 acres it has to be done by plat.

Chairperson Bowne stated the same rule was applying to both.

Mr. Yonke stated it will now on what is proposed.

Mr. Yonke stated if the Board chooses to grant the variance staff asks that it is made clear that it applies to both or none; otherwise the applicant would have to come back.

Chairperson Bowne stated that the reason the applicants are doing this is because they don't want a house built near them.

Mr. Earle stated that is one of the main reasons. The applicants would also like both the properties to be configured in a more attractive way and would like to avoid a house being built back there. The applicants would be willing to have that on a separate deed and go as far as give it access but it would be a lot of extra trouble to go through; the applicants prefer to have it on one deed.

Mr. Yonke stated that would require multiple variances.

Member M. Thomas asked if this could be platted up in four separate lots.

Mr. Yonke stated not based on the configurations that are proposed. If it were vacated and proposed to be platted with 5 acre pieces that were running north/south five acres served by a private driveway easement and you were to take out the existing houses and reconfigure it so there was only one house on each tract, then yes, you could theoretically plat it that way.

Member M. Thomas stated you have the one piece that they are wanting to add, just extend the common property line that would be more or less between the piece they want to add, extend that to the north line of Mr. Baskett's property.

Mr. Yonke stated we discussed that, that would be another option. There are a couple of different options which is why it was recommended to be denied. You can get different configurations that do meet the regulations that somewhat seem to meet the intent. Based on the plat that is proposed they jogged the line to avoid having to move a lagoon so it is not that perfect of a shape to begin with. You can not have another house as they are proposing it or as it exists now, no other house can be built on this property regardless. You've got one on each tract, that is all it is eligible for. The only way to have a house in that back area is if the house that is on the tract that is not platted is removed.

Chairperson Bowne stated that Mr. Earle does not want a close neighbor and she understands that. There is no other neighbor planned to be in there and there are other ways to divide this up and we don't have to set a precedent of granting a variance that is going to against what the regulations say that they can not do. Chairperson Bowne stated she can not grant a variance that will thwart the intent of the regulations.

Member M. Thomas stated that Mr. Baskett's property already has a home on it so there is no possible way short of destroying the existing structure to build back behind him as it is.

Mr. Baskett stated there is no way you could do it if you wanted to; there is no access.

Mr. Earle stated the resulting "L" shaped configuration and its relative lack of aesthetics isn't sufficient to warrant an exception.

Chairperson Bowne stated not to just extend the property. There are alternatives to dividing this up if Mr. Baskett wanted to divide his property. We already have some alternatives. To draw the line like it was proposed is not something that is in the regulations and there isn't sufficient reason to thwart the regulation.

Mr. Yonke stated that "L" shaped configuration is the existing configuration making it a little smaller or a little larger doesn't alter the existing configuration in terms of aesthetics. Aesthetics are not a grounds for a variance request.

Member Bier made and Member F. Thomas seconded a motion to **deny** a request by James and Virginia Baskett on behalf of Noah Earle to allow a lot depth that exceeds the permitted 3:1 ratio on property located at 10284 Hwy OO, Hallsville, MO (**Subdivision Regulations, Table A**).

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

Motion to deny request carries.                      4 Yes                      0 No

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3. Case Number 2005-009

Request by Blue Acres, Inc. for a variance from the required front setback for existing structures located at 8650 Hwy VV, Columbia (**Subdivision Regulations, Appendix B 1.8.2**).

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 applicants are in the process of platting the land that they own. There is an existing convenience store with fuel pumps and a canopy. Appendix B, Section 1.8.2 requires a 50 foot building line adjacent to state highways. The existing pump islands, canopy and store intrudes into 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 structures to be removed. The Board previously allowed the canopy and pump islands to be built in 1996 in the current location.
- b.) Granting this variance will not endanger the health, safety or welfare of the public; the existing structures have been in place since 1996 (the store longer) 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 that this variance be granted.

Chairperson Bowne asked if staff heard from any of the neighboring property owners.

Mr. Florea stated no.

Mr. Yonke stated he heard from one property owner who wanted information about the request.

Present: Neal Slattery, A Civil Group, 1010 Fay St., Columbia.  
Ed Sachs, Blue Acres Inc., 11194 Callaway Greens Dr., Fort Myers, FL.

Mr. Slattery presented a copy of the proposed plat.

Mr. Slattery stated this is an existing structure; it has been in this location for approximately 40 years. It has been in place since before the required setback regulations were implemented. The applicants ask that the building be allowed to remain as is. Precedent has already been set in 1996 to allow future improvements to be made within the setback area.

Open to public hearing.

Matt Staley, 150 Hinton Rd., Columbia.

Mr. Staley stated he received the notice in the mail and didn't understand what was going on. It sounds like it is just the filling station.

Chairperson Bowne stated that because the applicants are wishing to plat their land and either develop it or sell it off once you go through a platting process there are regulations that went in to effect since that building was built. One is the building setback line of 50 feet along that road. The building is already in existing so they are asking for a variance to leave the building where it is within the front setback because it won't meet the new regulations as it is.

Mr. Staley stated that applicants want to plat land. Is it behind the filling station they are wanting to plat?

Chairperson Bowne stated the applicants have a drawing that shows their plat.

Member M. Thomas stated the front setback is measured from the right of way of the highway as opposed to the center line.

Mr. Slattery pointed out the front setback on the plat and explained that a 50 foot setback is required.

Mr. Staley stated he heard the applicants want to build more buildings. Mr. Staley asked where it was going to be.

Mr. Slattery pointed out the areas on the map.

Chairperson Bowne stated that Board is not looking at the division of the land or how many tracts are proposed; in order to go through the platting process they would have to have a variance for their building to be within the front setback or they would have to tear their building down.

Mr. Staley stated he would get another letter for that.

Mr. Florea stated no. A subdivision doesn't require public notice; the preliminary plat has already been to the Planning and Zoning Commission and they approved it contingent upon receiving a variance tonight from the Board of Adjustment.

Chairperson Bowne stated that Planning and Zoning part is a totally different operation than the Board of Adjustment.

Mr. Staley asked when the new regulations of front setbacks come in to effect.

Mr. Florea stated 1995.

Mr. Staley asked if the building has been there since 1996.

Mr. Florea stated that building has been there in the late 1950's. In 1996 a variance was granted from the zoning regulations to allow the canopy to be built. The canopy is newer than the building itself. A subdivision variance wasn't asked for at that time because they weren't subdividing the property. All they needed was a zoning variance to build the canopy.

Chairperson Bowne asked what the setback was at that time.

Mr. Florea stated for pump islands there is a 15 foot requirement. For the structure there is a 25 foot setback.



Chairperson Bowne stated the variance they asked for back then was a variance from the zoning regulations of 22 feet.

Mr. Florea stated yes, it is approximately 3 foot off the property line now.

No one spoke in opposition to the request.

Closed to public hearing.

Member M. Thomas made a motion to approve the variance for the existing structures as is, where is.

Member Bier seconded the motion.

Chairperson Bowne stated she interprets the as is, where is definition to mean no additions to the building at all because it goes on to say if it was damaged by 75 percent it would have to be moved back. Chairperson Bowne stated on this request she would not like anything added to the building that close to the road.

Mr. Slattery asked if “as is, where is” allows for an addition on to the back away from the building setback.

Chairperson Bowne stated that is the question before the Board.

Mr. Florea stated that typically when these variances are granted we have interpreted that to mean that additions can be added on to the portions of the building that are outside the building line. However, in granting the variance the Board has the ability to condition that and restrict that.

Chairperson Bowne asked how far the building was inside the 50 foot setback.

Mr. Florea stated it is 3 feet from the front property line.

Chairperson Bowne stated that over half of the building is not in compliance.

Member F. Thomas stated he believed the approval should be conditioned.

Member Bier stated that Chairperson Bowne is proposing no changes to that building because so much of it is not in compliance.

Chairperson Bowne stated she would like to condition it literally as is, where is; no additions.

Mr. Sachs stated the only thing is that the existing islands and pumps and canopy is something you can't move as easy as a regular building itself. With the variance where the pumps were left where they were and put the canopy over the existing pumps. At a later date if the building needed to be enlarged slightly and went to the rear 10 foot the applicants wouldn't be disturbing any more of the front, it wouldn't be any closer than it already is. Is the Board saying that 10 feet can not be added to the back of the building?

Chairperson Bowne stated yes; that is what she is proposing. Also, no additional pumps or a bigger canopy. It is all close to the road and over half of it is not in compliance.

Mr. Florea stated this is A-R zoning, this is not commercially zoned land so it is a non-conforming use as such, it can't be expanded so the building can't be added on to.

Chairperson Bowne added unless it was rezoned.

Mr. Florea stated that is correct.

Chairperson Bowne asked if this condition would be on it if it were rezoned.

Mr. Florea stated the condition still holds as long as the variance is required.

Chairperson Bowne stated she would like to put a condition on it that there is no enlargement of the building at all in its present position.

Member M. Thomas amended his motion to include the condition that no additions are allowed to the building.

Chairperson Bowne stated that will be tied to the property even if it is rezoned.

Member M. Thomas made and Member Bier seconded a motion to **approve** a request by Blue Acres, Inc. for a variance from the required front setback for existing structures located at 8650 Hwy VV, Columbia (**Subdivision Regulations, Appendix B 1.8.2**) with the following conditions:

- 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.
- No additions to the building.

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

Motion to approve request carries.                      4 Yes                      0 No

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## **OLD BUSINESS**

Certificate of Decision: Case Number 2005-006, Adam Wolf

Mr. Florea read the decision in to the record.

Member M. Thomas made and Member F. Thomas seconded a motion to accept and sign said certificate of decision.

Motion passes by acclamation.

## **NEW BUSINESS**

Annual election of officers.

Chairperson Bowne turned the proceedings over to Mr. Yonke.

Mr. Yonke opened the floor for nominations for Chairperson for the Board of Adjustment.

Member F. Thomas nominated and Member Bier seconded the nomination for Member M. Thomas for Chairperson.

Nomination passed by acclamation.

Mr. Yonke turned the proceedings over to Chairperson M. Thomas.

Chairperson M. Thomas opened the floor for nominations for Vice-Chairperson.

Member Bowne nominated and Member F. Thomas seconded the nomination for Member Bier for Vice-Chairperson.

Nomination passed by acclamation.

## **ADJOURN**

Meeting adjourned at 7:55 p.m.

Respectfully Submitted,

Paula L Evans  
Secretary

Minutes approved this 25th day of August, 2005.