

## BOONE COUNTY BOARD OF ADJUSTMENT

BOONE COUNTY GOVERNMENT CENTER

801 E. WALNUT ST., COLUMBIA, MO.

Thursday, August 25, 2005

Vice-Chairperson Bier called the meeting to order at 7:00 p.m. in the Boone County Commission Chambers having a quorum present.

Vice-Chairperson Bier 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:

Gregory Bier, Vice-Chairperson  
Cindy Bowne  
Frank Thomas  
William Hatfield

Absent: Matthew Thomas, Chairperson

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

Minutes of the July 28, 2005 meeting were approved with one correction on page 2 in Mr. Coffman's statement prior to the motion. The minutes state "The applicants have dedicated a 20 ingress/egress easement". Correct this statement to "The applicants have dedicated a 20-**feet** ingress/egress easement."

Member Bowne made a motion to appoint Paula Evans, Secretary to Board and Notary Public, to serve in the capacity of clerk to swearing in witnesses recognizing that under Revised Statutes of Missouri Chapter

486.250.2 Powers of notary – Each notary public is empowered to Administer oaths and affirmations.  
Member Hatfield seconded the motion.

Member Bier	Yes	Member Bowne	Yes
Member F. Thomas	Yes	Member Hatfield	Yes

Motion to approve motion carries.                      4 Yes                      0 No

## **REQUEST**

1. Case Number 2005-010

Variance request by I-70 LLC to allow an existing billboard to remain within the front setback and the utility easement on property located at 8200 I-70 Drive SE., Columbia **(Subdivision Regulations, Appendix B, Sections 1.8.2 and 7.1).**

Planner, Thad Yonke gave the staff report stating the current zoning of the property is M-L, light industrial, as is the adjacent zoning. The site is east of Columbia on the south side of I-70 between Busenbark Carpet and GM Supply. There is an existing billboard on the site, the balance of the land is vacant. The applicants are in the process of platting the subject tract, the existing billboard is located within the area required by the subdivision regulations for a front setback and for the utility easement. The original zoning for this tract is M-L. The preliminary plat for this tract was approved by the Planning and Zoning Commission in July 2005 with conditions. The requested variance is from Subdivision regulations appendix B, Section 1.8.2 and 7.1. Staff notified 159 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 applicants have an approved preliminary plat for Trade Wind Park. There is an existing billboard on the site that is adjacent to I-70 Drive SE, which is a state maintained road. The subdivision regulations (Appendix B, 1.8.2) require that lands platted adjacent to state roadways must provide a setback of 50 feet. The regulations also require that a utility easement of at least 10 feet (or more) is to be provided when land is platted (Appendix B 7.1) along a public road. The existing billboard lies within the area that will be required for the front setback and the utility easement. The Planning and Zoning Commission approved the preliminary plat contingent upon either removal of the billboard or grant of a variance to allow it to remain.

- a.) The previous owner of the property signed a lease for the billboard in 1994. The terms of the lease allow it to remain on the property for a period of 15 years. The applicants have contacted the owner of the billboard and requested that the lease be terminated and the billboard removed. The owner has refused their request. The refusal of the owner to allow the billboard to be removed effectively prohibits the development of this property until 2009. Staff considers the refusal to constitute an unreasonable hardship on this property owner.

- b.) Granting this variance will not endanger the health, safety or welfare of the public. The existing billboard has been in place for a number of years, and is located off of the roadway. Should the state undertake road improvements prior to the lease expiring in 2009, the state could acquire additional right-of-way through eminent domain should it become necessary to widen this roadway. Utility providers are aware that the billboard is in place. The applicants can still provide an easement with the provision that the billboard will occupy this spot until 2009.
- c.) Granting this variance on a short term basis will not thwart or circumvent the general intent of the regulations. The intent of the regulations is to make sure that the utility providers are able to locate services in areas that are relatively free from obstruction.

Staff recommends approval of a variance to allow the billboard located at 8200 I-70 Drive SE to be within the front setback and utility easement with the provision that the billboard is to be removed following the termination of the lease in September 2009.

Member Bier asked if staff heard from any of the neighboring property owners.

Mr. Yonke stated staff received several calls but they were just to find out what the request was about. No one had opposition.

Present: Robert Hollis, Attorney, VanMatre and Harrison, 1103 E. Broadway, Columbia.

Mr. Hollis was sworn in.

Mr. Hollis presented a handout to the Board duplicating the upcoming power point presentation.

Mr. Hollis stated he represents I-70 LLC., which is the property owner, the people behind I-70 LLC are primarily David Atkins, Mark Atkins, and Paxton Schneider. Also appearing tonight will be Tim Crockett and Jessica Hudson. The variances the applicants are seeking are solely for the purpose of a final plat approval. The billboard, or billboards, as you will see must be allowed to remain in their current location. Moving the billboards is not an option, nor is removing the billboards. The applicants ask for variances from Subdivision regulations Appendix B, Section 1.8.2, also from section 10A, it sounds as if there may be another section that the applicant hasn't referenced but staff has referenced. In the end, what the applicants will be asking for is just a variance that meets the requirements of staff and of the Director of Planning such that a plat can be approved. It is important to note that these variances are temporary variances, whatever is approved. Upon the expiration of the current lease the property owner will not renew the lease, in fact, September 30, 2009 is when the current lease term ends. Within a reasonable time period after that the property owner will dismantle the billboards as they currently exist. There is a copy of the lease in the notice of application as one of the exhibits.

Mr. Hollis offered in to evidence as this is a quasi judicial hearing, a certified copy of the zoning ordinances and the regulations as well as a copy of the notice of application which was filed previously with Planning. Also a copy of the power point presentation and also the electronic version as well. The power point presentation included a copy of a map showing Interstate 70 and the site of about 150 acres. Mr. Hollis pointed out Richland Road which is to the south of the property. The location of the billboard is critical as a matter of development for this property. It is on the frontage road just south of I-70. It is a critical location for development. Mr. Hollis presented a photo of the site showing Richland Road looking east, a picture of the billboards. Mr. Hollis stated he just recently learned that this would be considered two billboards. Mr. Hollis asked that the variances take that in to consideration so the plat can be approved. Also presented is a picture of the billboard taken from the north of I-70 looking to the south. The billboards are located at the northeast corner of the property. A picture of the billboard looking to the west was presented.

Mr. Hollis stated the Board has various standards to consider when deciding whether to grant a variance to the ordinance and subdivision regulations. The Board was given a summary by the Planning staff. Mr. Hollis broke those standards down in to shorter questions. The first question to ask is this an exceptional situation? And the second is does this undue hardship result in unreasonable deprivation of land use? The Board will find that both exist. With respect to the exceptional situation; the applicants can't remove the billboard legally. The offer has been made to Viacom who holds the lease and it has been made informally as well as formally and it has been flatly denied and money is not an issue, it doesn't matter what the price is, they are not interested. You will see that if you look at the application, one of the attachments is a response from Viacom.

Mr. Hollis called Jessica Hudson as a witness. Ms. Hudson was the one that had correspondence with Viacom and is a representative of I-70 LLC.

Present: Jessica Hudson, 5379 Trikalla Drive, Columbia.

Ms. Hudson was sworn in.

Mr. Hollis: (To Ms. Hollis) You are a representative of I-70 LLC?

Ms. Hudson: Yes.

Mr. Hollis: To your knowledge, is this a true and accurate copy of the general warranty deed by which I-70 LLC took title to the property in which this billboard sits?

Ms. Hudson: It is.

Mr. Hollis: (To the Board) There is a copy of this warranty deed that is part of the application; I've made additional copies if you want to see it now.

Member Bier asked staff if the Board already has this.

Mr. Yonke stated yes.

Mr. Hollis: (To Ms. Hudson) There currently is a lease with respect to the billboard or billboards that are located at the northwest corner is that right?

Ms. Hudson: Correct.

Mr. Hollis: Is this a true and accurate copy of the lease which disallows I-70 LLC from removing or moving the billboards?

Ms. Hudson: It is.

Mr. Hollis: Is it true that you've corresponded with representatives of Viacom with respect to this lease?

Ms. Hudson: Yes.

Mr. Hollis: And those representatives, in your opinion, had the authority to make decisions regarding the billboards.

Ms. Hudson: They did.

Mr. Hollis: Is this a true and accurate copy of a return letter from your request to negotiate purchasing the remainder of the lease term?

Ms. Hudson: It is.

Mr. Hollis stated he had a couple of quotes from the letter. Mr. Hollis stated after he was done reading the quotes Ms. Hudson could tell him whether these are quotes from the letter that you received from Viacom representative Hank Millford.

Mr. Hollis: Part of the quote is that Viacom does not engage in lease buy-outs. I must reject your request to remove (talking about the lease). Viacom insists on occupying the premises through the entire term of the agreement.

Ms. Hudson: Those are correct.

Mr. Hollis: Those are all quotes from the letter you received.

Ms. Hudson: Yes.

Mr. Hollis stated the second standard that he has broken down here is that there is undue hardship with respect to how the ordinances and regulations are being applied. Without removing the billboard the final plat can't be approved. That evidenced by the Planning and Zoning Commission minutes, it is also evidenced by text written on the preliminary plat again, which is part of the record. Mr. Hollis called Tim Crockett as a witness.

Tim Crockett, Crockett Engineering Consultants, 2608 N. Stadium Blvd., Columbia.

Mr. Crockett was sworn in.

Mr. Hollis: What is your profession?

Mr. Crockett: I am a professional engineer.

Mr. Hollis: So you deal with such topics on a regular basis. When I say such topics, platting of property.

Mr. Crockett: Yes I do.

Mr. Hollis: Is it true that you are the engineer that was taking this plat through the approval process of the County?

Mr. Crockett: I did.

Mr. Hollis: Can you tell me why is a variance or a group of variances necessary for final plat approval.

Mr. Crockett: Under current Boone County subdivision regulations and zoning regulations when a piece of property is platted certain setbacks are required to be granted on that plat. In this case, being adjacent to a MoDot maintained roadway, a 50-foot setback is required. Since that requirement is on that plat these billboards are within that setback so a variance to that requirement is being requested.

Mr. Hollis: Are there other reasonable alternatives in your opinion?

Mr. Crockett: No. Not that hasn't already been explored.

Mr. Hollis: I am going to read a quote and you can tell me if it is an accurate quote from the Planning and Zoning minutes, that is the minutes from the hearing on the preliminary plat. A variance from the subdivision regulations for a structure in the 50-foot building line along state roads and the required utility easement or another means allowable under the regulations that is acceptable to the Director (of Planning). This is what is required in order for a final plat approval, is that true?

Mr. Crockett: That is correct.

Mr. Hollis: That is found in the minutes from the preliminary plat hearing, is this a true and accurate copy of the minutes from that preliminary plat hearing?

Mr. Crockett: They are.

Mr. Hollis stated this quote with respect to this billboard is under the section which is labeled Trade Wind Park.

Mr. Hollis: The text that appears on the preliminary plat that was approved, the text goes as follows. "The billboard must be 'removed relocated behind the building setback or a variance granted prior to approval of the final plat'". Is that a quote from the preliminary plat?

Mr. Crockett: Yes.

Mr. Hollis: In your opinion, is this a true and accurate copy of the preliminary plat?

Mr. Crockett: It is.

Mr. Hollis presented a reduced version of the preliminary plat to the Board members.

Mr. Hollis stated that additional standards that are broken down can be addressed as follows: You can ask yourselves the question are these variances detrimental to the public good? You could also ask do these variances impair the intent of the subdivision and zoning regulations? You have heard the opinion of staff that you could answer both of these in the negative. With respect to public good Mr. Hollis believes this is a benefit, especially in the minds of several people that this is in the public good, it is not a detriment, it is actually a benefit. It is as follows: the only way you can guarantee that this sign be removed shortly after September 30, 2009 is if these variances are granted otherwise the lease could remain and very well could remain as the property would sit vacant undeveloped and could possibly be sold to someone who would be willing to keep the lease in its place. Mr. Hollis argues that it is a benefit if the Board seeks to get rid of or to lessen the number of billboards along this stretch of I-70. The intent of the regulations is kind of a subjective thought, part of the intent is that structures be located in accordance with the regulations and with the ordinances. This is a violation of that intent. They are located in an inappropriate place however the billboard or billboards can't be removed; again because they are guaranteed to be removed because the variances would be temporary I think the intents are promoted rather than impaired.

Mr. Hollis stated one last standard, are these variances sought primarily to avoid financial expense in complying with the regulations or ordinances. As the Board can see from the letter of response from Viacom, money is not an issue. They won't entertain an offer. So avoiding financial expense is not an issue. Finally, there is no alternative to a variance. Mr. Hollis has examined the situation as legal council to I-70 LLC, civil engineers, as you have heard have examined the situation and can not find another plausible

solution other than variances and Mr. Hollis has spoken at lengths with the Boone County Planning Department and members of staff that are present here this evening that agree there are no reasonable alternatives. To conclude; the applicants ask for the Boards approval of variances, whatever they may be, that are satisfactory to the Director of Planning such that the final plat can be approved in substantially the same form as the preliminary plat.

Open to public hearing.

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

Closed to public hearing.

Member Bowne stated that we need to start with the specific variances that the applicants are asking for. Member Bowne stated she is not going to leave that open ended; it is not the Boards job to tell the applicants they are asking for, it is the applicants job to tell the Board what variances they are asking for. In the discussion with Mr. Crockett, Mr. Hollis listed two specific variances, one was within the 50-foot setback and one was within the utility setback; prior to that the applicant deluded that there was a third one. The Board needs that specifically spelled out.

Mr. Hollis asked to confer with staff.

Mr. Hollis stated initially there was only one regulation that was pointed out to the applicants and then after that during a phone conversation, which is the reason the second variance was added. Mr. Hollis asked staff if 10A the second part that was mentioned.

Mr. Yonke stated 10A would be the zoning section. The subdivision regulation, the only thing that can get variances in the subdivision regulations are the appendices. It is appendix B.1.8.2, is the provision that requires the 50-foot, regardless of what the zoning setback is, the subdividing of the property requires the 50-foot setback along a state road. The other one that is referenced in the staff report is appendix B 7.1 which is the utility easement provision. Section 10.A. which is actually the zoning regulation setback. In a M-L zoning district the setback is 25-foot. So the question would become whether or not it does encroach upon that or not. It would be safe to give the variance for that on the preliminary plat the area of the billboard is shown semi-indeterminably, there is not a specific distance given therefore we felt it was safest to just assume that it needed the variances from all of them. That way if you want to make it in the location that it is without any modification then that would cover both the zoning and the subdivision regulations clearly so that no one would have any assumption that they could modify the location of the current billboard.

Mr. Hollis asked it if should be modified to say that it is variances plural.

Mr. Yonke stated the certificate of decision which will need to be recorded will have the actual specifics of the findings and it would be good to specify in that the exact provisions which Mr. Yonke believes would be 1.8.2, and 7.1 of the subdivision regulations and 10.A. of the zoning regulations. Staff has no objection to the hearing being considered to be for all of those variances.

Mr. Hollis stated for two billboards and the applicants would be covered.

Mr. Yonke stated that is correct. There was a question before if there was a "V" shaped billboard that is supported on a single monopole, some people will call that a single billboard, some will call it two billboards, if you look at the County's definition, each face would constitute a billboard. In this case because there are poles that are connected at the ground rather than a single monopole you could argue even

more that it is two separate billboards even though it mimics what you get on a single monopole with two billboards. The clarification that it is two; staff always intended both on the preliminary plat and for this for it to be as it is now. It would constitute both of them.

Member Bier asked if there was a legally binding definition of where those billboards are. Member Bier asked how relevant that was besides a circle on a plat.

Mr. Yonke stated if necessary the Board could specify that the surveyor give a dimension.

Member Bier stated just so we know exactly what setback we are dealing with because right now we don't know if it is 49-feet or 5-feet.

Mr. Yonke asked Mr. Crockett if he had that information.

Mr. Crockett stated he believed it was roughly 21-feet from the front property line.

Mr. Yonke stated that it is in the front setback.

Member Bowne asked if Viacom initiated the lease for both faces at the same time.

Mr. Hollis stated he doesn't know. He doesn't know about the initial lease. I-70 LLC didn't own the property.

Member Bowne asked if both faces expire on September 30, 2009.

Mr. Hollis stated yes; the members have the lease. This is a situation where a large company showed up to a farmers house and said sign this lease and I will give your some money over the next few years. Mr. Hollis stated he could argue lots of things about that lease with Viacom but it would be very expensive and it would be in court. To answer the question, it applies to both sides. Also, more importantly, there is not another lease, there aren't two leases.

Member Bowne stated the print on the lease is very small; is there something in there that deals with if the billboard is damaged as to what happens, is it automatically replaced?

Mr. Hollis stated the billboard company has every right you can imagine in such an instance. If it is damaged they have the ability to repair it and actually replace it in a different location. If a truck runs over the billboard they wouldn't be able to rebuild it, not because of the lease but because of the subdivision regulations. So it is actually moot.

Mr. Yonke stated if the Board specifies that this variance is specific for the as is where is kind of situation then they would be bound by that as well. The approval of the plat is contingent upon one of those issues but even beyond that it is highly unlikely, under the zoning ordinance since the sign provisions are now in effect which effectively have a half mile between billboard spacing, if this sign were to go down there is probably a billboard within a half mile which would prevent a new permit from being issued for a new billboard on this site.

Member Bowne stated the Board does have the option of doing an as is where is.

Mr. Yonke stated that would probably be best for clarification since the applicants don't want it moved. In this case everyone involved wants it exactly as it is until it goes away.



Mr. Hollis stated that is correct.

Member Bowne asked what is a reasonable length of time for removing the billboard when the lease expires September 30, 2009.

Mr. Crockett stated within 30 days.

Member Bowne stated she assumes this is being platted and that there will be a sale of property. If the Board puts a condition on this that it is only allowed until September 30, 2009 and then it has 30 days to be removed do the new owners at that time have the option of applying for another variance.

Mr. Yonke stated you always have the option to apply for a variance. The key in this case is the certificate of decision is required to be recorded. It will be recorded which means it will be of record so anyone purchasing the land would be bound by the restrictions of record so even if they came in and asked to have a variance and the Board even wanted to entertain that in the first place another party might be able to argue that they are bound by the original restriction.

Member Bowne stated the Board always asks if any variances have been granted on the property. Even if there has been a variance granted you could come in and ask for another variance.

Mr. Yonke stated there is nothing that ever bars you from applying.

Member Bowne made a motion to grant the request for a variance for the existing billboards, front and back, from the regulations of the 50-foot setback, and the 10-foot utility setback as required in the subdivision regulations and from the 25-foot setback as required in the zoning regulations with the condition that it is an as is where is, the structure can not be moved and if it is damaged it can not be replaced. Member Thomas seconded the motion.

Member Bowne amended the motion that the billboard must be removed 30 days following the termination of the lease, which terminates September 30, 2009 so you would have until October 30, 2009 to remove the entire billboard. Member Thomas seconded the amendment.

Member Bowne made and Member Thomas seconded a motion to **approve** a request by I-70 LLC to allow an existing billboard to remain within the front setback and the utility easement and within the 25-foot setback on property located at 8200 I-70 Drive SE., Columbia (**Subdivision Regulations, Appendix B, Sections 1.8.2 and 7.1, Zoning Regulations 10.A.**) with the following **two conditions:**

- The billboard is to be removed by October 30, 2009.
- The requests are granted “as is, where is” meaning the existing structure maintain the same location, footprint, and square footage. If the existing structure 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 Bier	Yes	Member Bowne	Yes
Member F. Thomas	Yes	Member Hatfield	Yes

Motion to approve request with conditions carries.      4   Yes              0   No

**OLD BUSINESS**

Signing of Certificates of Decision for the Taylor request and the Blue Acres Inc. request. Hearing date July 28, 2005.

**NEW BUSINESS**

None.

**ADJOURN**

Meeting adjourned at 7:45 p.m.

Respectfully Submitted,

Paula L Evans  
Secretary

Minutes approved this 22nd day of September, 2005.