

BOONE COUNTY BOARD OF ADJUSTMENT

BOONE COUNTY GOVERNMENT CENTER

801 E. WALNUT ST., COLUMBIA, MO.

Thursday, February 23, 2006

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

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, Chairperson
Frank Thomas, Vice-Chairperson
Cindy Bowne

Absent: William Hatfield
Vacant Seat

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

Minutes of the December 6, 2005 meeting were approved with no corrections

REQUEST

1. Case Number 2006-001

Request by Greg and Dana Cunningham for a variance from the 25' front setback in the R-S (Single Family Residential) district for an existing structure located at 4760 S Old Mill Creek Rd., Columbia, (**Zoning Regulations Section 10. A.**).

Planner, Thad Yonke gave the staff report stating the property is zoned R-S, single family residential as is the adjacent zoning. The site is located southwest of Columbia off of Old Mill Creek Road. The city limits about this property on the east and south side. There is an existing shed on the property and a house under construction. The applicant would like to keep the existing shed in its current location. The original zoning for this tract is R-S. The requested variance is from zoning regulations Section 10.A. which requires a front setback of 25-feet. The subject structure is approximately 20-feet from the property line. Staff notified 9 property owners.

Present: Greg Cunningham, 1903 Flat Rock Place, Columbia.
Steve Heying, surveyor, 1202 Madison Street, Columbia.

Mr. Cunningham stated there was an existing shed on the property when he purchased the place. Mr. Cunningham didn't think about it being 20-foot from the property line. He would like to keep it for a storage shed as he has already spent \$4500 on it. He put three garage doors and a floor in it and he would like to keep it.

Mr. Heying stated those setbacks were measured in 1996.

Chairperson Bier asked staff if there were any responses from the neighbors.

Mr. Yonke stated yes; staff heard from three neighbors. One was a request to find out what was going on. The other two were related to a road issue which isn't related to this variance request.

Open to public hearing.

Present speaking in favor of the request:

Jack Wax, 4750 Old Mill Creek Rd., Columbia.

Mr. Wax stated the shed is in view from his back door. Mr. Wax does not care if the shed stays; it has been there since he bought his house.

Chairperson Bier asked Mr. Wax if he was north of the property in question.

Mr. Wax stated he was west; he is adjacent to it about 600 feet.

Chairperson Bier asked Mr. Wax if he had any issues with the variance.

Mr. Wax stated no.

No one spoke in opposition to the request.

Closed to public hearing.

Member Bowne asked when the shed was built.

Mr. Cunningham stated he didn't know; it is at least 20 years old.

Mr. Heying stated it is pole construction; it is still in real good shape.

Member Bowne asked if it was built prior to 1973.

Mr. Cunningham stated he didn't know.

Member Bowne asked the value of the shed.

Mr. Cunningham stated with what he has spent on it probably close to \$10,000.

Member Bowne asked if there was a reason it didn't show up on the assessor's list; the property is listed with no buildings.

Mr. Cunningham stated he doesn't know why it doesn't show it.

Member Bowne asked when he bought the property.

Mr. Cunningham stated April 2005.

Chairperson Bier stated the applicant put garage doors on it and a concrete slab.

Mr. Cunningham stated yes.

Chairperson Bier asked if there were any utilities there.

Mr. Cunningham stated yes; there is electric but it is actually coming from the old house.

Member Bowne asked what precipitated this request.

Mr. Cunningham stated because he is splitting the 10 acres in to two 5 acre pieces.

Member Bowne asked if it was being split north/south or east/west.

Mr. Cunningham stated east/west.

Member Bowne asked Mr. Cunningham if he was keeping the north half.

Mr. Cunningham stated the line is going north and south; the applicant is keeping the west half.

Member Bowne asked how Mr. Cunningham would access the east half.

Mr. Cunningham stated he was going to give an easement on his five acres back to the other five.

Member Bowne asked if that would run along the north property line.

Mr. Cunningham stated yes.

Member Bowne asked if it would go behind the shed.

Mr. Cunningham stated it would go in front of it.

Member Bowne asked if it would go between the shed and the property line.

Mr. Heying stated no.

Mr. Cunningham stated south of the shed.

Mr. Heying stated from the edge of the easement and the front of the shed, the south side of the shed.

Member Bowne asked if the easement would go around the shed.

Mr. Cunningham stated yes.

Mr. Heying stated it is shown on the survey.

Member Bowne asked what the shed was like before he remodeled it.

Mr. Cunningham stated it was three sided; open on the front. Mr. Cunningham framed it in and put garage doors on it.

Mr. Heying stated it might not have shown up on the assessor's records because it wasn't an enclosed building.

Member Bowne stated the applicant changed that.

Mr. Heying stated just recently.

Member Bowne asked when this tract was platted.

Mr. Mach, planner, stated it is still in progress, it is on the current agenda for the February 28, 2006 County Commission meeting.

Member Bowne asked when the 10 acre piece was created; when Mr. Wax got his property and Mr. Cunningham got his property.

Mr. Heying stated the survey that created this parcel as a 10 acre survey is old.

Mr. Yonke stated it predates 1995.

Mr. Heying stated it predates 1973; it is close to that. Mr. Wax's was 1973; this 10 acres in 1989.

Mr. Yonke stated in order to be a legal lot of record all it had to do was beat 1995; if it was done prior to that the 10 acre piece would be a legal lot of record.

Mr. Heying stated the 10 acres was created by a survey in 709 at 452 January 17, 1989.

Member Bowne asked if that is when Mr. Cunningham's ten acres was created.

Mr. Heying stated yes.

Member Bowne asked if Mr. Wax's was at the same time.

Mr. Heying stated no; Mr. Wax's was July 18, 1973.

Member Bowne stated Mr. Cagle had more property at that time or Mr. Cagle didn't own it then. Because this is showing 20 acres all as one piece.

Mr. Heying stated yes; he owned both surveys. Mr. Cagle bought it in 1989 from Boatman's Bank.

Member Bowne stated that is the same time Mr. Cunningham's 10 acres was separated as a separate tract.

Mr. Heying stated yes August 25, 1989. The 10 acre survey predated that by 6 or 7 months. There was a legal description written on it dated May 22, 1986 which predates the survey. That legal description written in 1986 was two other parties of Ray to Raper. The Raper's were the ones who wrote the easement between them and the adjoining owners to get back to this tract.

Member Bowne stated the variance requested was for the building being within the 25-foot setback line.

Mr. Heying stated yes.

Member Bowne asked staff how that affected the no building in your front yard requirement.

Mr. Heying stated this property is accessed through a private road easement and you enter the property as shown on the survey by the northwest corner. The front yard is at the end of the private easement.

Mr. Yonke stated it really should have a variance for that too now that there is a house being constructed when this was originally first talked about the only structure on the property was the shed. On a ten acre piece an accessory building can be considered a primary structure until a real primary structure gets built. That didn't come up but now that there is a house being constructed if the shed is in what is considered the front yard that should probably have a variance.

Member Bowne stated this tract looks really messed up. You have a building setting over the property line that isn't the applicants building. You have a building on the property that isn't assessed.

Mr. Cunningham stated he had nothing to do with that.

Member Bowne stated she has cows and she has to turn those in whether someone tells her that or not. Those are two irregularities she sees. Then there is an easement going around the shed and a utility easement; so any utilities that run down are going to jog around it.

Mr. Heying stated the utilities will fit in the 20-foot to the north; the building was set in the easement area.

Chairperson Bier asked if this lot was flat or if there were any topographical issues.

Mr. Heying stated there is a drainage that runs diagonally through the middle of it; it is not deep though but it does create some contours.

Member Bowne asked how the property to the east is accessed.

Mr. Heying stated that is Sinclair Farms.

Mr. Cunningham stated he believes it is accessed off Sinclair Road.

Member Bowne asked if it was in the city.

Mr. Heying stated yes; it has been annexed.

Member Bowne stated she has a problem with the other building sitting over the property line and we are looking at another building that is within the setback.

Mr. Yonke stated if the building that is across the property line was solely on this property but near the property line it would require a variance for being in the setback. You can't get a variance for being across a property line on to another person's property; that is why it is not here. We can not find a building permit for either building so if they have been there for a significant period of time that would explain why there was no building permit. Depending on how it was constructed; it was a three sided shed, maybe at the time somebody asked us whether or not a three sided shed would be considered an agricultural structure and someone may have told them yes. It is hard to say on that kind of stuff what exactly went in to those structures getting placed there. With respect to the building being over the property line; there is an easement that goes around it that is between the Wax's property and this property to settle the civil issues; for the County that is not good enough, if this was staying both under County jurisdiction in order to do the plat we would cause a jog to have to end up with that on one property or the other. The buildings are in the current configuration against a property line that is not being created by this plat; it is a current situation so if they weren't dividing it this stuff wouldn't have come up. Now that they are dividing it, in the process of doing that land division the Health Department has to review the plat as well as other agencies. One of the things that comes to light is that because this property is adjoining the City of Columbia and there is a sewer line close to that property the Health Department has told us they will not issue an onsite waste water permit for this property. What that means is the only way to get waste water service to that property is through a central system. The only central system close is the City of Columbia and because we all know how that works the City of Columbia won't give it to you unless you annex in to the city. Consequently the building permit that is currently taken out indicates a central system will ultimately be used so no occupancy permit could be issued under the County. As soon as this property gets divided in half it will very shortly go in to the city limits of Columbia. The City of Columbia allows buildings to cross property lines under certain situations. What our department is choosing to do at this point is not deal with this issue since it is going in the city limits of Columbia.

Member Bowne asked if this property is going in to the City then why is the County Board of Adjustment dealing with it today; why doesn't it wait until it goes in to the city and then it meets whatever rules the City has.

Mr. Yonke stated he imagines that because the City doesn't mind. They will take existing lots that come in as is. If it gets divided in to two five acre tracts they will take it as two five acre lots. If it goes in as a single ten acre piece it probably can't meet the city requirements to divide; that would be why we are seeing the division prior to it being annexed.

Member Bowne stated due to that she sees this application as an attempt to circumvent the regulations. It is getting ready to go in to the City the County should not be dealing with it and giving a variance for a rule that we have and it is because it gets around that so it can go in to the City.

Mr. Heying stated the applicants are trying to work within two sets of regulations; not circumventing either one of them. Mr. Heying stated he doesn't see it that way; he sees it as the applicants trying to meet the County regulations as a division in the County and then meet the City's regulations to get annexed in to the City of Columbia.

Member Bowne stated to divide it in the County rules it would require a variance. The applicants can't meet the County rules as it is. Why don't the applicants wait and divide it in the City; they have to have it for their waste water; it has to go in to the City; why are we going to the County and then through the City.

Mr. Cunningham stated that is what the applicants were told they had to do.

Mr. Yonke stated that is what they have to do if they want to keep the shed. They can divide the property by removing the shed. If the shed is removed the impediment against the plat goes away and the plat goes on and the property gets divided. Really the only issue here is being able to divide the property and keep the existing shed or get rid of the shed and even if this variance doesn't get granted the plat can still go forward. It is not a yes or no on the plat; it is can the plat go forward keeping the shed.

Mr. Heying stated what the applicants are attempting to do by this division and this plat is that we will end up with like and similar properties as are currently in the area. In other words the neighbors all have houses on properties that are the same size and shape.

Mr. Heying stated the hardship on this request is the waste of the building.

Mr. Cunningham stated he already spent \$4500 on this building.

Member Bowne asked if the applicant had a building permit when he remodeled the building.

Mr. Cunningham stated no.

Member Bowne asked if a building permit was required.

Mr. Yonke stated if the building is getting electricity then yes, a building permit would have been required.

Mr. Cunningham stated it already had electricity.

Mr. Florea stated when it received electricity it would have had to have a building permit.

Mr. Cunningham stated the electricity comes from the other barn that is on their property.

Mr. Yonke stated to pour a slab for it and to put doors on it wouldn't necessarily trigger a building permit; anything electrical does.

Chairperson Bier asked if the doors faced south.

Mr. Cunningham stated yes.

Chairperson Bier stated the easement goes right in front of those garage doors.

Mr. Cunningham stated yes.

Chairperson Bier stated he is not comfortable with this request either simply because it is a pole barn and financial hardships don't come in with a building like that. The other situation we have is there are only three Members present tonight and it becomes a moot point if one Member is saying no.

Member Bowne made and Member Bier seconded a motion to **deny** a request by Greg and Dana Cunningham for a variance from the 25' front setback in the R-S (Single Family Residential) district for an existing structure located at 4760 S Old Mill Creek Rd., Columbia, (**Zoning Regulations Section 10. A.**):

Member Bier	Yes	Member Bowne	Yes
Member F. Thomas	NO		

Motion to deny request carries. 2 Yes 1 No

Chairperson Bier informed the applicants that their request has been denied.

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OLD BUSINESS

Certificate of Decision: Shirley and Francis Shock request. Hearing date December 6, 2005.

The Board approved the Certificate.

Certificate of Decision: Colin See and David Johnson request. Hearing date December 6, 2005.

The Board approved the Certificate.

Certificate of Decision: P & M Sales, Inc request. Hearing date December 6, 2005.

The Board approved the Certificate.

NEW BUSINESS

ADJOURN

Meeting adjourned at 7:35 p.m.

Respectfully Submitted,

Paula L Evans
Secretary

Minutes approved this 23rd day of March, 2006.