

BOONE COUNTY BOARD OF ADJUSTMENT

BOONE COUNTY GOVERNMENT CENTER

801 E. WALNUT ST., COLUMBIA, MO.

Thursday, August 23, 2007

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

Member 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.

Member Bowne stated that there are not five members on the Board right now; there is a vacancy.

Roll call was taken:

Present: Cindy Bowne
 John Schultz
 David Butcher
 William Hatfield

Absent: Vacant Seat

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

Minutes of the July 26, 2007 meeting were approved with corrections by acclamation.

REQUEST

Case Number 2007-003

Request by G E M Property LLC for a variance from the 50' setback (**Zoning Regulations Section 10.A.** "Minimum Yard Requirement") on 5.86 acres in the A-2 (Agricultural) zoning district for an existing house to remain within the new building line established by minor plat located at 6820 E Claysville Rd., Hartsburg.

Planner, Thad Yonke gave the staff report stating the property is currently zoned A-2 as is the adjacent property. The site is located west of Highway 63 approximately 5 ½ miles south of Ashland. There is a house and several accessory structures on this property. The applicant would like to plat this parcel in to a two lot subdivision. The existing house lies within the required 50-foot setback. The original zoning for this tract is A-2; there have been no previous requests submitted on behalf of this tract. The requested variance is from the Zoning Regulations 10.A. which requires a front setback of 50-foot in an A-2 zoning district. Staff notified 19 property owners.

Present: Dustin McLeland, Manager of GEM Property, 505 Billy Joe Sapp Dr., Ashland.

Chairperson Bowne asked for clarification of the lot size.

Mr. Yonke stated the proposed tract is 5.86 acres if they plat the property. A 70 acre piece of property, if they divide it as a piece down, the applicants could cut everything except 20 acres around the house and avoid this issue. But because the applicants are preparing a plat it causes the violation. Actually, the house is already in the setback, it is about 10-feet in to the 50-foot setback now. The difference is staff has not received any complaint on this parent property that would trigger staff forcing action on this property. If there was a 20 acre boundary survey on this piece of property, those aren't reviewed for any complaint. Staff just signs off on them because it is 20 acres or larger, it gets recorded and its done.

Chairperson Bowne stated as the property exists right now it is still a 70 acre tract that the Board is being asked to grant a variance on; the property has not been platted yet.

Mr. Yonke stated it is about a 73 acre parent parcel if you consider all the property north of the road.

Mr. McLeland stated the applicants have 73 acres right now and are trying to cut it down to 5.86 acres to make it more marketable to sell the house. If the applicants went with a 20 acre tract it puts it out of the price range for anyone else to come in and buy the house. The house many years old but is in great condition and the applicants don't want to have to take it down.

Open to public hearing.

Present speaking in support of the request:

Steve Proctor, surveyor for Trabue, Hansen, and Hinshaw, 1901 Pennsylvania, Columbia.

Mr. Proctor stated the applicants started off complying with the current zoning regulations. There is another tract across the road which the road naturally divides. When the applicants located the house the applicants noticed that the house was over the new 50-foot setback. At that point Mr. McLeland had

interest in selling the house. But as Mr. McLeland stated no one would buy 20 acres with the house that is probably 40 or 50 years old although structurally it is still in pretty good shape. The applicants have already addressed the comments from the platting process; the plat is set for the next agenda for the Planning and Zoning Commission. The applicants have already been approved for four ten acre tracts. The applicants had to leave 20 acres to comply with the current regulations. The applicants wish to do a 10 acre and a survey on the remainder.

No one spoke in opposition.

Closed to public.

Chairperson Bowne asked if anyone was living in the house now.

Mr. McLeland stated no.

Chairperson Bowne asked if the applicants knew the age of the house.

Mr. McLeland stated he didn't know an exact age; it is estimated as 40 or 50 years old.

Chairperson Bowne asked if the land across the road has already been sold off.

Mr. Proctor stated it would have been but the applicants can't get a contract until it is platted.

Chairperson Bowne stated there is not a plat approved on that yet.

Mr. Proctor stated there is not final approval but the applicants have addressed comments; it is supposed to go before the next Commission hearing.

Chairperson Bowne stated at this point in time there is a 33 foot setback.

Mr. Yonke stated there is a 50-foot setback from the edge of the right of way.

Chairperson Bowne stated that there is a 50-foot building line right now.

Mr. Yonke stated there is a 50-foot setback from wherever the right of way line is.

Chairperson Bowne asked how far it is in the 50-foot setback right now.

Mr. Yonke stated currently the property line goes to the center of the road. In the past the Department has always operated under the belief that there was a 30-foot statutory right of way; 30-foot from the center line in each direction. That is the policy that is used.

Chairperson Bowne stated the reason she asks is that it looks like 95 percent of the house is within the building line.

Mr. Proctor stated that is correct.

Chairperson Bowne stated that 95 percent of the house is out of compliance.

Member Butcher stated the property predates the subdivision regulations so it is in compliance right now.

Mr. Yonke stated it is not technically in compliance in that it encroaches about 10-feet. There is an additional factor here in that the plat triggers a 33 foot from the center line of the road right of way dedication. As explained before, the Department goes from the center line of the road and assumes a 15 foot half-width. That 15 feet is where that would be measured from today. Right now you've got the additional between that 15 feet and the 33 feet that the property line is being pushed back by the plat. What the Members are seeing in their packet where it shows 95 percent of the house inside the setback area is what the condition will be after platting. Before the plat you would shift that property line back toward the road by 18 feet so it is more like 40 to 50 percent of the house is currently in the setback.

Mr. Butcher stated it is before the subdivision regulations went in to effect. This was enacted before the regulations accepted it.

Mr. Yonke stated the zoning regulations are what give the 50-foot setback so all properties are subject to those whether they are divided or not. It is in noncompliance currently but staff has never gotten a complaint; if staff had gotten a complaint staff would have had the property owners come before the Board previously.

Member Schultz asked if staff received any comments from neighbors.

Mr. Florea stated staff got quite a few phone calls but mostly they were calls asking what the applicants were asking to do. Once that was explained the caller had no objections.

Mr. Yonke stated one of the callers was concerned; they didn't really have a problem with the house being where it is because it has always been there, but was more concerned about what difference it made about the size of the property, if it could be divided in such a way that would not require a variance and it was just cutting a small piece that was causing the problem. The caller had a little discomfort with that. The caller was informed they could come to the meeting tonight and voice their concerns.

Member Butcher stated it looks like there is a lagoon on the north side of the road.

Mr. Proctor stated it is dried up. Mr. Proctor believes there used to be a mobile home on that property

Member Butcher asked if there is a lagoon on that tract.

Mr. Proctor stated not that he saw.

Member Butcher asked if you could get a lagoon on that tract.

Mr. Proctor stated yes.

Member Schultz stated as far as the tract on the other side of the road; can that be subdivided now, is it a separate tract and that is why they are able to sell that off or will there need to be a variance on that.

Mr. Yonke stated the property on the other side of the road is a totally separate issue. Once that plat is finalized the remainder it leaves on the south side of the road is in excess of 20 acres so if they only platted that one lot and never did anything else with the bottom 70 acres that is how it would stand. So the top lot can be severed from the other which is why it has been able to go as far as it is; it just hasn't gone to the County Commission yet because the Board of Adjustment meeting came first.

Chairperson Bowne stated on this bottom piece the applicants already have four ten acre tracts which is larger than what an A-2 zoning is; the applicants already have four ten acre tracts drawn up on the plat and that left the 20 plus here that requires no variance and no modification to the house.

Mr. Yonke stated like the first one, if you have 70 acres and divide it in to four ten acre tracts that leaves 30 acres. If the 30 has the house on it, it is over 20 acres; they can do that without triggering anything.

Chairperson Bowne asked the applicants why this was a hardship. It is obviously not topographical; the applicant stated it is possible to put a lagoon on the small tract. The Board has two ways to grant a variance, one is by topography and one is by hardship. Chairperson Bowne stated she is not seeing a hardship.

Mr. Proctor stated it comes down to the worth of the house with five acres versus 20 acres. You will be stuck with either tearing the house down, which has value, or holding on to it with 20 acres and probably never moving it.

Chairperson Bowne asked the assessed value of the house.

Mr. McLeland stated the real estate value with five acres is approximately between \$106,000 and \$110,000. The larger tract takes the value way down.

Chairperson Bowne asked if the other tracts the applicant is selling have houses on them.

Mr. McLeland stated no.

Chairperson Bowne asked the value of those.

Mr. McLeland stated \$100,000 per tract.

Chairperson Bowne asked if the applicant is saying the house is only worth \$6,000.

Mr. McLeland stated no; we are not talking about five acre tracts we are talking about 10 acre tracts. The house is worth about \$60,000 or \$70,000 and about \$40,000 to \$50,000 for the land.

Chairperson Bowne stated the applicant has four 10 acre tracts that they are selling for \$100,000 each.

Mr. McLeland stated that varies between 10 acres to 12 or 14 acres. If you go 14 acres it is \$140,000 or \$10,000 per acre.

Chairperson Bowne stated the five acres and the house is valued at \$106,000. Is that the asking price or is that what it is assessed at?

Mr. McLeland stated that is the asking price.

Member Butcher asked if the applicant bought the property with the intention of subdividing.

Mr. McLeland stated yes.

Member Butcher made and Member Schultz seconded a motion to **approve** a request by G E M Property LLC for a variance from the 50' setback (**Zoning Regulations Section 10.A.** "Minimum Yard Requirement") on 5.86 acres in the A-2 (Agricultural) zoning district for an existing house to remain within the new building line established by minor plat located at 6820 E Claysville Rd., Hartsburg **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.

Member Bowne	NO	Member Schultz	Yes
Member Hatfield	Yes	Member Butcher	Yes

Motion to approve request carries 3 YES 1 NO

Chairperson Bowne stated if the applicants have questions about the condition they can contact the Planning Department. Chairperson Bowne encouraged the applicants to include that condition in any sales agreement so the buyer is aware of that.



Case Number 2007-004

Request by Adam and Kimberly Rosenfelder for a variance from the 50' setback (**Zoning Regulations Section 10.A.** "Minimum Yard Requirement") on 3.22 acres in the A-1P (Planned Agricultural) zoning district for an existing house to remain within the new building line established by a planned development and a minor plat located at 23800 N Jefferson St., Centralia.

Planner, Bill Florea gave the staff report stating the current zoning of the property is A-1 as is the adjacent zoning. The site is located $\frac{3}{4}$ mile north of Centralia; there is a house, garage, and barn on the property. The applicant is in the process of rezoning the property to A-1P, if successful the applicant will retain the area shown as lot 1 consisting of 3.22 acres. The existing house will lie within the required 50-foot setback following the dedication of required right of way. The original zoning of this tract is A-1. There have been no previous requests submitted for this parcel. Staff notified 6 property owners.

Present: Adam Rosenfelder, 23800 N. Jefferson St., Centralia.

Chairperson Bowne asked for clarification on the size of the lot. When adding the two lots together they don't equal to 10 acres but 9.68

Mr. Florea stated the balance is made up of the required right of way dedication.

Mr. Butcher stated the applicants are going to A-1P. If the applicants go to the planned district can part of that land be a reduced building line?

Mr. Florea stated no; they have to retain a 50-foot perimeter setback around the entire tract. If you are doing a subdivision plat and creating your own roads you can reduce setbacks on those roads but around the

perimeter of the parent tract you need to maintain a setback equal to the front setback requirement for the zoning district.

Mr. Butcher stated if the Board grants this variance and the applicants don't get their requested zoning this plat won't go through but does the variance stay with the house?

Mr. Florea stated if the Board grants a variance it stays with the property.

Chairperson Bowne stated once the variance is granted it stays regardless of what the future holds.

Mr. Rosenfelder stated the adjacent 150 acres is being sold to a neighbor. When the applicants purchased the house the house and property were owned by Mr. Rosenfelder's parents and his grandparents previous to that. Close to two years ago the applicants purchased the house and 10 acres and part of that 10 acres was the existing field surrounding the house. With the pending purchase of the farm ground surrounding the house the applicants would like to sell the farm ground that they own that is part of their ten acre tract and the applicants will be left with the house and property that is not farm ground. With the planned zoning there will be no change in the land use from what it is currently there will just be the existing house which is what this variance is for right now.

Chairperson Bowne asked if the applicants would like to address future plans for the house.

Mr. Rosenfelder stated he believed on the plan the surveyor allowed for a possible addition. That is not anywhere in the near future it was put on the plan just in case.

Chairperson Bowne stated in the long range plans, according to the plat, there are some plans to maybe add on to the back of the house.

Mr. Rosenfelder stated it was allowed for in the drawing.

Chairperson Bowne stated anything that goes in to the A-1P has to be planned now or go for review again.

Mr. Rosenfelder stated he understands that.

Chairperson Bowne stated there are future plans to add on to the back of the house.

Mr. Rosenfelder stated that is a possibility and also there are plans for another building.

Open to public hearing.

Present speaking in favor of the request:

Kimberly Rosenfelder, 23800 N. Jefferson St., Centralia.

Mrs. Rosenfelder stated she believes there are plans for a garage.

Chairperson Bowne stated future plans include a garage and a barn or adding on to the barn.

Mrs. Rosenfelder stated yes.

No one spoke in opposition to the request.

Closed to public hearing.

Member Butcher stated the review plan shows the applicants have an additional house they want to build someday or they are allowing themselves an opportunity to add a house. It appears as though that is within the building line. If the variance is granted that won't be allowed to add to it because of the review plan.

Mr. Florea stated on the review plan they are leaving themselves the flexibility to add up to a 500-square foot expansion to the house behind the building line.

Member Butcher stated that is the interpretation they are going to get even if the variance is granted.

Mr. Florea stated it depends on whether the Board adds the "as is, where is" condition because as the language was just read, "as is, where is" says you have to maintain the same square footage. If you put that condition on it the applicants will be asked to remove that area from the review plan before it is approved.

Member Butcher asked if the Board gives the applicants a variance from the building line setback on this particular house without that condition would they be allowed to make their additions to the house.

Mr. Florea stated yes.

Member Hatfield asked if staff heard from any of the neighbors.

Mr. Florea stated no.

Member Butcher asked if the applicants lived in this home.

Mr. Rosenfelder stated yes. The applicant's parents are selling the 150 acres adjacent to the applicant's property.

Member Butcher asked if the applicants are selling their property to the same person that is buying his parents property.

Mr. Rosenfelder stated yes; the main reason for that is he is putting a center fitted irrigation system in and that is going to clip the applicant's property so it makes sense to sell that piece anyway.

Member Shultz stated if the variance is given without the as is, where is clause the applicants would be able to build within that 50-foot building line.

Mr. Florea stated they would only be able to build within the area they show on their review plan as their future expansion area which is behind the 50-foot building line.

Member Hatfield asked if the house was only 7-feet within the 50 foot setback.

Mr. Florea stated that looks about right.

Member Hatfield stated if the applicants do build on to the current house it will be behind it.

Mr. Florea stated yes.

Chairperson Bowne stated if the variance is granted it only applies to the home, it does not apply to any garage or any other buildings they would all have to be outside that 50-foot line.

Mr. Florea stated that is correct; it would have to be in compliance with the plan that the applicants have filed which shows a building envelope around the existing garage and around the existing barn. Both of those are well back from the building line.

Member Butcher made and Member Schultz seconded a motion to **approve as submitted** a request by Adam and Kimberly Rosenfelder for a variance from the 50' setback (**Zoning Regulations Section 10.A. "Minimum Yard Requirement"**) on 3.22 acres in the A-1P (Planned Agricultural) zoning district for an existing house to remain within the new building line established by a planned development and a minor plat located at 23800 N Jefferson St., Centralia:

Member Bowne	Yes	Member Butcher	Yes
Member Hatfield	Yes	Member Schultz	Yes

Motion to approve request carries unanimously.

Chairperson Bowne encouraged the applicant that whenever they sell the other tract they include some information in the sales agreement so that it is attached to that so everyone is aware of those requirements.

OLD BUSINESS

Certificate of Decision

The certificates for Miller, Forney, and Strothmann were accepted by the Board and signed by Chairperson Bowne.

NEW BUSINESS

None.

ADJOURN

Meeting adjourned at 7:45 p.m.

Respectfully Submitted,

Paula L Evans
Secretary

Minutes approved this 27th day of September, 2007.