

BOONE COUNTY BOARD OF ADJUSTMENT

BOONE COUNTY GOVERNMENT CENTER

801 E. WALNUT ST., COLUMBIA, MO.

Thursday, May 24, 2012

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

Member Thomas 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: Frank Thomas
John Schultz
Cindy Bowne

Absent: Greg Bier
David Butcher

Staff: Bill Florea, Senior Planner
Uriah Mach, Planner
Paula Evans, Secretary

Minutes of the February 23, 2011 meeting were approved by acclamation.

REQUEST

1. Case Number 2012-002

Request by Phillip and Brice Hanberry for a variance from the minimum lot depth in the A-2 (agriculture) zoning district located at 7700 S. Highpoint Lane, Columbia. (Subdivision Regulations 1.8.2, Table A)

Chairperson Thomas asked the applicants if they wished to continue only having three members of the Board present. Applicants indicated they would continue this evening.

Planner, Bill Florea gave the following staff report:

The site is located southwest of Columbia approximately ½ mile south of State Highway K; there is a house on the property. The applicants would like to develop the property utilizing the current A-2 zoning and allow for use of the existing road infrastructure that was built by the previous owner. The existing street layout was designed and built on the premise that this property would be a planned development which allows greater flexibility in design standards. Attempting to develop the property under the existing A-2 zoning with the streets already constructed has resulted in two lots that do not comply with the minimum depth provision of the subdivision regulations. The original zoning for this tract is A-2; a previous owner requested that this property be rezoned to A-RP in 2006, however that developer did not complete the development process and the plans were never finalized. The previous owner did install some infrastructure, including internal streets. The requested variance is from subdivision regulations Section 1.8.2, Table A – lots greater than 2.5 acres shall have a minimum lot depth of 250-feet. Staff notified 27 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, Phillip and Brice Hanberry, own 52.8 acres located south of Columbia on High Point Lane, approximately ½ mile south of State Highway K. The property is zoned A-2. The applicants would like to develop the property under the A-2 zoning. However, a previous owner started to develop the tract for a higher density and built streets in accordance with the topography and the proposed higher density. The existing streets have caused some design issues for the proposed lots. Appendix B 1.8.2. and Table A of the subdivision regulations requires that lots greater than 2.5 acres have a minimum lot depth of 250 feet.

- a. The applicant will incur unnecessary hardship if this variance is not granted as they would have to rebuild and relocate several sections of existing road.
- b. Granting this variance will not endanger the health, safety, or welfare of the public. The proposed configuration of lots should make the potential building sites accessible to emergency services.
- c. Granting this variance will not thwart or circumvent the general intent of the regulations.

Staff recommends that this variance be granted.

Present, representing the request:

David Butcher, Crockett Engineering, 2608 N Stadium Blvd, Columbia
Brice Hanberry, 7700 S High Point Ln., Columbia

David Butcher: I would like to make notice that while I do serve on this Board; this is not going to cause a conflict of interest due to the fact that I have no financial gain in the Board's decision whether it is for or against the request. In addition, I expect no favoritism in regards to this request. The previous owner of the property had a planned development that was approved in the preliminary state and they never fulfilled their obligation; they built the streets and quite a bit of infrastructure and the property was foreclosed. This left the applicants with either making the streets private or public. The property was too dense for the applicants liking so they decided to bring back the density to what is normally allowed in A-2 zoning. The only issue is if we use the existing streets to dedicate as public streets it creates a lot configuration that will make it extremely difficult to meet the subdivision regulations. The applicants are here to ask for a variance for a more shallow lot.

Open to public hearing.

Present speaking in favor of the request:

Tom Mendenhall, 7300 Quantrill's Pass, Columbia

Tom Mendenhall: I am president of the Bonne Femme Neighborhood Association; there are 38 lots in our subdivision, the lot sizes are a minimum of five acres. They have made this a lot less dense; we've had no problems with the people who have bought this property. This is a reasonable request and I think our neighborhood association is good with it; it is compatible with what is in the area.

No one spoke in opposition.

Closed to public hearing.

Chairperson Thomas: Are the streets concrete?

David Butcher: They are concrete, curb and gutter streets.

Chairperson Thomas: What are the depths of the lots that don't meet the regulations?

David Butcher: We have to have 150 feet width and 250 feet of depth per the subdivision regulations. The spot that is labeled "common area" is not really appropriate, we would like it not to be a common area; we will probably try to put a sewer in there. No matter what type of development occurs here we will have to have this relief. Whether we are ready to plat this tomorrow this will have to happen on this because of the streets.

Member Bowne: Even with a variance on the lot size there is no way to put a structure on lot 2. On lot 7, what is the actual depth?

David Butcher: On the east side is 15 feet and to the west 177 feet, it is more like 125 feet.

Member Bowne: Do we have a lot depth if we take it perpendicular to the road to the corner of the lot?

David Butcher: We won't meet the depth.

Member Bowne: How far are you missing it by?

David Butcher: Probably 100 feet.

Member Bowne: What is the sewer plan for this development?

David Butcher: We are trying to get onsite wastewater systems; we are doing a cost-benefit analysis to see if connection is going to be mandatory.

Member Bowne: Where is there enough space on lot 7 for a residence and onsite system?

David Butcher: That is a 2.5 acre piece of ground; there is plenty of room for a house. As far as sewer goes, we will probably combine lots 2 and 7 and have the onsite system on what is now lot 2.

Member Schultz: If lots 2 and 7 were combined would you still need this variance.

David Butcher: Yes.

Bill Florea: Through the platting process if they are successful in getting an onsite system they will be showing on the plat a plan that shows how they are going to accommodate an onsite system for each lot. It would have to have soils tests and they would have to show where the soils were adequate. They have already submitted the soils tests; there is an approved site on lot 7; it is not down the hill so that would require another soil analysis if they wanted to move that location. These are engineered, sub-surface systems so the setbacks are much less, around 10 feet from the property line; there should be adequate space.

Chairperson Thomas: The applicants want to divide their property and sell off lots?

David Butcher: Yes; the streets make a natural divide. If we were to turn this in to 10 acre land divisions it could be done by Administrative Survey but I would still have issues with this area. I can't leave a remnant behind that doesn't meet the regulations.

Chairperson Thomas: What were they doing with this area in the previous plan?

Bill Florea: They were dividing it in to smaller lots.

Member Bowne: Is there an agreement with Boone County Public Works to take these as public streets?

David Butcher: Yes; that will be part of the platting process, they won't take them until they inspect them. There are a few modifications to be done in order to be acceptable.

Member Schultz: Are there any concerns if we do grant a variance?

Bill Florea: Earlier in the review process we asked Mr. Butcher to show the 50 foot rear setback on lot 7 just so it is on the plat and the buyer will be aware of it.

Member Bowne: If they don't combine lots 2 and 7 will it be marked on the plat that lot 2 does not have an acceptable building site?

Bill Florea: It will be identified as it is now as common area not for development.

David Butcher: That is part of the reason we want to combine these lots because the common element requires a maintenance issue and you have to set up an organization that is going to take care of it. If it is combined it is clear who owns that property.

Member Bowne made a motion to grant the request for a variance from the minimum lot depth on lot 7.

Bill Florea: And lot 2?

Member Bowne: The plan was to combine those two lots.

Bill Florea: The exhibit shows a lot 2 and it is part of the record.

Member Bowne: I know.

Bill Florea: So you do not wish to grant a variance on that portion of the lot?

Member Bowne: No, because the plan is to combine them.

Bill Florea: Then they won't be able to plat.

Member Bowne: I thought the intention was to combine those lots.

Bill Florea: That is what they are saying. The current submittal shows it as you see it now; lot 2 and lot 7.

Chairperson Thomas: If we deny the variance on lot 2 and accept it on 7....

Bill Florea: Then they can't plat. We have an exhibit for this request; you are defining your variance by sighting lot 7 as shown on that exhibit. Since you are excluding what is shown as lot 2 then that would prevent that portion from being platted.

Member Bowne: I understand that but if I grant a variance on each lot then there is nothing compelling them to combine those lots and we are left with lot 2. I understand the road is there and that it is a natural division; I wish the applicants would have presented it with lots 2 and 7 already combined since that was the plan.

David Butcher: We may or may not combine the lots. We could have two lots or we may keep it as one if we have an organization that is going to take it as a common area. Our intention at this time is to combine those lots.

Bill Florea: If they plat it as it is currently shown it will have a note on it that it is not for development.

Member Bowne withdrew her motion.

Member Schultz made and Member Thomas seconded a motion to **approve** the request by Phillip and Brice Hanberry for a variance from the minimum lot depth for lots 2 and 7 as shown on the current exhibit in the A-2 (agriculture) zoning district located at 7700 S. Highpoint Lane, Columbia:

Discussion on the motion:

Member Bowne: There is going to be a stipulation that lot 2 cannot be developed as a residential lot?

Bill Florea: Yes.

Voting was as follows:

Member Thomas	Yes	Member Bowne	Yes
Member Schultz	Yes		

Motion to approve the request carries unanimously

2. Case Number 2012-003

a. Request by James and Rachel Paneck for a variance from the front 50-foot setback in the A-2 (agriculture) zoning district for an existing single family dwelling located at 55 N. Route O, Rocheport. (Zoning Regulations 10.A; Subdivision Regulations, Appendix B, 1.8.2)

Prior to the meeting it was determined that a variance was not needed for the single family dwelling.

b. Request by James and Rachel Paneck for a variance from the front 50-foot setback in the A-2 (agriculture) zoning district for existing outbuildings located at 55 N. Route O, Rocheport. (Zoning Regulations 10.A; Subdivision Regulations, Appendix B, 1.8.2)

c. Request by James and Rachel Paneck for a variance for existing outbuildings to be in front of a house located at 55 N. Route O, Rocheport. (Zoning Regulations Section 7.A.5)

Administrative Note: At the time of application Paneck was the owner of the property, Tompkins Homes and Development Inc. signed the application as the buyer. Prior to tonight's hearing Tompkins had purchased the property. The certificate of decision will be in Tompkins' name.

Chairperson Thomas asked the applicants if they wished to continue only having three members of the Board present. Applicants indicated they would continue this evening.

Planner, Uriah Mach gave the following staff report:

The current zoning of the property is A-2 as is all adjacent zoning. The site is located approximately one mile south of Interstate 70 at the southwest corner of State Highway O and Sinking Creek Road; there is a house along with several accessory structures on this property. The requested variances are for accessory structures less than 50 feet from the edge of the right-of-way. Subdivision of the property may result in an accessory structure being located on a lot smaller than five acres that does not have a house or that is in front of the house. The original zoning for this tract is A-2, there have been no previous requests submitted for this tract. The requested variances are from zoning regulations 10.A which requires a minimum 50 foot setback, from zoning regulations 7.A(5) accessory building in front of a house, and from subdivision regulations Appendix B 1.8.2 minimum 50 foot setback from a state road. Staff notified 18 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, James and Rachel Paneck, own 20 acres located at the intersection of State Highway O and Sinking Creek Road in western Boone County. The property is zoned A-2 and is approximately one mile south of Interstate 70. The applicants have proposed subdividing this tract, however there is a house and several accessory structures on the property. The existing house appears to meet the setback that would be required by platting 50 feet from the edge of the state highway right of way but it appears that the accessory structures may not. Appendix B 1.8.2 of the subdivision regulations requires a 50 foot building line adjacent to a state road.

- a. The applicant will incur unnecessary hardship if this variance is not granted as they would have to remove part of the structure or relocate it in order to comply with the regulations.
- b. Granting this variance will not endanger the health, safety, or welfare of the public. The structure is located far enough from the driving surface as to not hinder the flow of traffic, and sufficient distance should the state desire to widen the road. Staff is unaware of any proposal by the state to widen State Highway O.
- c. Granting this variance will not thwart or circumvent the general intent of the regulations.

Staff recommends that this variance be granted.

Present, representing the request:

David Butcher, Crockett Engineering, 2608 N Stadium Blvd. Columbia
Mike Tompkins, 6000 S Highway KK, Columbia

David Butcher: There are a few sensitive areas on this land and access issues with the highway. There are several buildings on this property that weren't thought out very well when they were built; they are substantial in size. The property has been in place for 20 years or more; it looks like a

homestead and is treated like a homestead and blends well. We would like to keep the house, barn, and shed intact on lot 2 and in doing so I have an issue with the building line that affects the barn. The shed doesn't get in to the building line but it is required to be behind the main structure. As far as the shed that is shown on lot 3; I think it is reasonable for us to move that shed, we aren't going to ask for a variance on that one.

Open to public hearing.

No one spoke in favor or opposition.

Closed to public hearing.

Member Schultz: There are two sheds on lot 3; which one is being moved.

David Butcher: The one in the building line by the highway.

Member Shultz: Is it going to be tore down?

David Butcher: It is on stilts, we are going to saw it off and move it.

Chairperson Thomas: The barn on lot 2 is completely in the building line?

David Butcher: Yes, it is a very large barn; it has a concrete floor and is well built. The driveway to this property comes in off that edge. The building is an asset to the property.

Chairperson Thomas: Is it a fairly new building?

David Butcher: It is in great shape.

Chairperson Thomas: What about the shed on lot 2?

David Butcher: It is a utility shed and dog kennel.

Chairperson Thomas: Does it have a concrete floor?

David Butcher: It doesn't have a concrete floor but it is substantial enough that it would probably be destroyed if we attempted to move it. The reason for the configuration for the lots is because there is a setback requirement for the lagoon. There is an existing field entrance that is going to serve lot 3 off of Route O.

Member Schultz: The report indicated it is a 20 acre tract; what we are looking at is about 10 acres.

David Butcher: That is correct; after the concept review with the planners we determined that there were some sensitive areas so we are going to try and keep the density in the front and stay away from the environmentally sensitive area toward the rear of the property. Mr. Tompkins decided to make a 10 acre parcel back there with one house and leave the density in the front.

Member Schultz: Does Mr. Tompkins currently own the land or recently purchase it?

Mike Tompkins: I do own the land; I closed on it a couple of weeks ago.

David Butcher: Mr. and Mrs. Paneck owned the property when the application was filed, Mr. Tompkins signed it as the buyer.

Member Bowne: I would have liked pictures of the shed. The applicant's state it is a utility shed with a dirt floor that can't be moved. I am questioning whether it can be moved or disassembled.

David Butcher: Anything can be moved with enough effort. All I can give you is my testimony; I think that it is reasonable that an ordinary, prudent person would not find it reasonable to move this building. It is acceptable to believe that it is going to be a difficult task and will probably have to be destroyed; it wouldn't be worth the time and effort because of its size. It is not in the setbacks so the question is whether it can stay in front of the home.

Member Shultz: On lot 3 there is a shed up toward the top end of the lot; does that one need a variance as well?

David Butcher: No, that is a play house.

Mike Tompkins: That building is gone now.

Member Schult: So the only one we have issues with now is the barn and the shed in the northeast corner?

David Butcher: Correct; if you grant a variance today it is still not going to be on the shed on lot 3. We are moving that shed regardless of any variance that the Board grants.

Member Bowne made and Member Thomas seconded a motion to **approve** the request by James and Rachel Paneck, (Case number 2012-003 b) for a variance from the front 50-foot setback in the A-2 (agriculture) zoning district for existing outbuildings located at 55 N. Route O, Lot 2, Rocheport **with the following condition:**

- 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 Thomas	Yes	Member Bowne	Yes
Member Schult	Yes		

Motion to approve the request carries unanimously

Member Bowne made and Member Schult seconded a motion to **approve** the request by James and Rachel Paneck (Case number 2012-003 c) for a variance for existing outbuildings to be in front of a house located at 55 N. Route O, Lot 2, Rocheport **with the following condition:**

- 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 Thomas	Yes	Member Bowne	Yes
Member Schultz	Yes		

Motion to approve the request carries unanimously

Member Bowne made and Member Schultz seconded a motion to **deny** the request by James and Rachel Paneck (Case number 2012-003 b) for a variance for an existing shed on lot 3 located at 55 N. Route O, Rocheport per the applicant's request:

Member Thomas	Yes	Member Bowne	Yes
Member Schultz	Yes		

Motion to deny the request carries unanimously

3. Case Number 2012-004

a. Request by David and Christie Casey for a variance from the front 50-foot setback in the A-1 (agriculture) zoning district for an existing single family dwelling located at 9420 E. Clatterbuck Road, Ashland. (Zoning Regulations 10.A)

b. Request by David and Christie Casey for a variance from the front 50-foot setback in the A-1 (agriculture) zoning district for an existing detached garage located at 9420 E. Clatterbuck Road, Ashland. (Zoning Regulations 10.A)

Chairperson Thomas asked the applicants if they wished to continue only having three members of the Board present. Applicants indicated they would continue this evening.

Planner, Bill Florea gave the following staff report:

The current zoning is A-1 as is adjacent zoning. The subject tract is two miles east of Ashland approximately 350-feet west of the Clatterbuck Road / Bob Veach Road intersection. There is a house and detached garage on the property. The applicants would like to split their tract into two parcels through a planned development. The existing house and detached garage will be located within the front setback when the tract is platted. The original zoning for this tract is A-1, there have been no previous requests submitted for this tract. The requested variance is from Zoning Regulations 10.A which requires a minimum 50-foot front setback. Staff notified 16 property owners.

Present, representing the applicant:

Chris Casey, 9420 E Clatterbuck Rd., Ashland
Steve Proctor, Trabue, Hansen, Hinshaw Inc., 1901 Pennsylvania, Columbia

Chris Casey: We have 15 acres and we have lived on that property since 1977, we built the house and added on to it in 1984. The addition that was added in 1984 is over the property line. After that we built the garage, it is a metal pole barn and we use it to store our cars and lawn mowers; it is very close to the road. We wanted to sell our house and garage to our son and we want to build a house for ourselves in the other part of it. I spoke with staff and they suggested that the way to

proceed was to do the planned rezoning because we have no desire to divide it into 2 ½ acre tracts; we just want to split it in two tracts and keep it in our family. We had a concept review and that is when the issue of the setbacks came up.

Steve Proctor: If this had already been zoned A-2 they could have done the family transfer and we wouldn't be here. Or, if she had 20 acres she could have split the property into two 10 acre parcels. The garage is well constructed.

Chris Casey: It has a concrete floor.

The applicants presented a picture of the garage.

Open to public hearing.

No one spoke in favor or opposition.

Closed to public hearing.

Member Bowne: How far is the house into the setbacks?

Steve Proctor: Probably 15 feet.

Member Bowne: How far is the shed into the setback?

Steve Proctor: It is completely within the setback.

Member Bowne: Is there a reason we are not applying to rezone the property to A-2?

Uriah Mach: I believe the applicants intend to rezone to A-2 but are waiting to see if the variance is approved.

Member Bowne: Is the topography or driving conditions along Clatterbuck Road any concern for having a building that close? Is it a dangerous road?

Steve Proctor: In the concept review nothing was brought up. The road is straight and then it goes down hill; there will not be a site-distance issue.

Member Schultz: Is it a gravel road?

Chris Casey: It is chip/seal.

Chairperson Thomas made a motion to approve the request for a variance from the front setback for an existing single family dwelling with the condition "as is, where is".

The condition was explained to the applicant.

Chris Casey: If there was an addition to the house that was not within the setback is that okay?

Chairperson Thomas: No, it has to maintain the same square footage and footprint.

Member Thomas made and Member Schultz seconded a motion to **approve** the request by David and Christie Casey (Case number 2012-004 a) for a variance from the front 50-foot setback in the A-1 zoning district for an existing single family dwelling located at 9420 E. Clatterbuck Road, Ashland. **with the following condition:**

- 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 Thomas	Yes	Member Bowne	Yes
Member Schultz	Yes		

Motion to approve the request carries unanimously

Member Thomas made and Member Bowne seconded a motion to **approve** the request by David and Christie Casey (Case number 2012-004 b) for a variance from the front 50-foot setback in the A-1 zoning district for an existing detached garage located at 9420 E. Clatterbuck Road, Ashland **with the following condition:**

- 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 Thomas	Yes	Member Bowne	Yes
Member Schultz	Yes		

Motion to approve the request carries unanimously

OLD BUSINESS

Certificate of decision

- Case # 2012-001 Georgia R. Redden, Mildred I. Wright, John Williams, Edward Williams, George and Ethel Williams Trust FBO James Otis Williams and Betty A. Butler -
Approved and signed by Chairperson Thomas

NEW BUSINESS

None

ADJOURN

Meeting adjourned at 8:05 p.m.

Respectfully Submitted,

Paula L Evans
Secretary

Minutes approved this th day of .