

BOONE COUNTY BOARD OF ADJUSTMENT

BOONE COUNTY GOVERNMENT CENTER

801 E. WALNUT ST., COLUMBIA, MO.

Thursday, March 28, 2013

Planner, Bill Florea called the meeting to order at 7:00 p.m. in the Boone County Commission Chambers having a quorum present.

SPECIAL ELECTION

In the case of absence of both Chairperson and Vice-Chairperson, Board of Adjustment bylaws Section 1E, Temporary Chairperson, state the following:

“Whenever there shall be a meeting called of the Board and neither the Chairperson or Vice Chairperson is present at the appointed time, any member of the Board may serve as a temporary Chairperson, without election other than by the members present. Such temporary Chairperson shall have the same power as the Chairperson and Vice Chairperson, but for that meeting only.”

Nominations were taken for temporary Chairperson

Member Lightfoot nominated Member Robbins to serve as temporary Chairperson, Member Butcher seconded the motion. All members voted in favor.

OPENING STATEMENT

Member Robbins read the following procedural statement:

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, such as tonight, 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: Rhonda Lightfoot
David Butcher
Lance Robbins

Absent: Frank Thomas
Cindy Bowne

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

Minutes of the November 29, 2012 meeting were approved by acclamation.

REQUEST

1. Case Number 2013-001

Request by Charlotte Pisarek for a variance from the front 50-foot setback in the A-2 (Agriculture) zoning district for an existing single family dwelling located at 3485 E Biggs Rd., Ashland.
(Zoning Regulations 10.A)

Planner, Uriah Mach gave the following staff report:

This tract is 5.31 acres and is zoned A-2, property to the north and east are zoned A-1, property to the south and west is zoned A-2. The tract is located approximately 1 ¼ miles northwest of Ashland on Biggs Road about ½ mile west of State Highway DD. There is a single family dwelling that was built in 2009 located on the lot. The requested variance is to resolve a setback issue in regards to the existing house encroaching into the front setback by 4.35 feet. The original zoning for this property is A-1; a rezoning request to A-2 was approved in 2009. A one lot subdivision, Biggs Road subdivision, was platted in 2009. The applicants request a variance from zoning regulations 10.A which requires a 50 foot front setback. Staff notified 20 property owners about this request.

Mr. Mach stated he took two calls in regard to this request, the callers asked what the request was about, once explained the callers didn't seem to have a problem with this request.

Member Butcher: I too was contacted about this request. Someone who lives on Biggs Road called me at home and was curious about this request. His name was Kevin Brown and indicated he was in support of this request.

Present representing the request:

Gene Basinger, Surveyor, 19335 S Route A, Hartsburg
Charlotte Pisarek, 3485 E Biggs Rd., Ashland

Gene Basinger: I did the original surveying on this tract of land in 2009 that created the lot. Ms. Pisarek called me requesting I locate some corners for her as she was going to build an outbuilding on the property; I did that so she could meet her setback requirements. There came a question as to

whether the home was encroaching, if you look at the plat and aerial photos it seems pretty close so I went out and surveyed the property and found that there is an encroachment of 4.35 feet over the building line. When I created this lot in 2009 staff said there was a home built on it; the previous owner or the builder staked the house in the wrong spot and when they called for an inspection the inspector didn't ask for the house to be located by a surveyor. The house was built and was subsequently sold to Ms. Pisarek and she was not aware that there was a problem.

Open to public hearing.

No one spoke in support or opposition to the request.

Closed to public hearing.

Member Butcher: This is a stereotypical as-is-where-is issue that we normally face. (to Mr. Basinger) Was there a building line platted on this property when you surveyed it originally?

Gene Basinger: Yes.

Member Butcher: So the builder that built the home just neglected his responsibilities.

Gene Basinger: Yes.

Thad Yonke: In their defense, the building line parallels the road; it is on the curved part of the road.

Member Butcher: If the road were ever straightened out it would not hinder the location of the house; it would probably be more of a benefit.

Member Butcher made and Member Lightfoot seconded a motion to **approve** the request by Charlotte Pisarek for a variance from the front 50-foot setback in the A-2 (Agriculture) zoning district for an existing single family dwelling located at 3485 E Biggs Rd., 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 Robbins	Yes	Member Lightfoot	Yes
Member Butcher	Yes		

Motion to approve the request carries unanimously

2. Case Number 2013-002

Request by William and Mary Whites for a variance from the side setback in the R-S (Single Family Residential) district for an existing accessory structure located at 5117 S Brock Rodgers Rd., Columbia. (**Zoning Regulations 10.A**)

Planner, Bill Florea gave the following staff report:

The property is described as lot 9 of Gans Creek Subdivision as shown in plat book 12, page 90 of Boone County records. The tract size is 9 acres and the current zoning is R-S; property to the east, south and west is also zoned R-S, property to the north is Columbia city limits. This site is located just south of Columbia approximately ½ mile west of Highway 63, there is a single family dwelling and detached garage on the property. The requested variance is to allow the detached garage, which has been built too close to the side property line, to remain in its current location. The original zoning for this property is R-S; Gans Creek Subdivision was platted in 1978, the house was built in 1980 and the detached garage was built in 1994. The requested variance is from section 10.C(8) which states “any accessory building more than ten feet from the main building may be erected not closer than two feet to a side or rear lot line, but must be located at least 60 feet from the front street line”. Staff notified 26 property owners; staff received no calls regarding this request.

Present, representing the request:

William Whites, 5117 Brock Rodgers Rd, Columbia

Mary Whites, 5117 Brock Rodgers Rd, Columbia

William Whites: We bought this house in 1994 and before I bought the house I had it surveyed because the three car garage was very important; at the time we had some antique cars and we had to have a place to park them. Before we signed the contract we had the house and lot surveyed. The stakes were marked so we knew where to put the garage. The lot next to us is empty and our neighbor decided to have it surveyed so he could sell it.

Mary Whites: We came home from an appointment and found survey flags all over the yard; my husband went out and looked and the survey around the garage was not where the old survey stake was. We talked to our neighbor about this and he suggested we have a survey done as well so you know which survey is right. We called our surveyor and he came out and surveyed the property. When he got through surveying he found that the stakes that the neighbors surveyor had were placed correctly. That means the one we constructed the garage by was incorrect. It is within nine inches of what the county requires. We could either remove one end because it is just a corner of the garage that is not far enough away from the property line. We would either have to take off part of that wall, 18 inches so that it would be within the guidelines. We were advised to try to get a variance of nine inches.

William Whites: The garage is totally on my property; it does not reach the property line at all. We had a contract and took off the overhang on the back.

Open to public hearing.

Present, speaking in support:

Allan Rodgers, 2108 Bluff Pointe Drive, Columbia

Allan Rodgers: Mr. Whites described the situation very accurately, I was surprised to find that we needed a variance I needed to get it all cleared before I could sell my lot. I am here to support Mr. Whites request, we have been good neighbors and I want to be sure that we remain that way.

Member Butcher: You own the property to the west of the Whites?

Allan Rodgers: Yes.

Member Butcher: I saw a picture that looked like it could have been a lot line adjustment. Is that a negotiation that you are trying to work out with your neighbor?

Allan Rodgers: No, that 25 foot section happened in 1979. I sold the person that originally built the house 25 feet off of lot 27.

Member Butcher: On exhibit 21 the applicant shows a survey that was prepared and the line goes up and makes a jog and indicates it is going around the barn; what does this exhibit represent?

William Whites: That was a lot line adjustment that I proposed; I proposed to have a land swap. I offered two feet on the east side of the property line to Mr. Rodgers and he would gain two feet and he would also gain two feet of frontage; I would then take two feet on the back side next to my garage so I would have 24 inches.

Member Butcher: What was the result of that negotiation?

William Whites: We decided that it wasn't a good idea so we didn't go through with it.

Member Butcher: Mr. Rodgers is here in support of the variance so it seems that he is willing to work with it, a drawing was prepared.

Allan Rodgers: I am not in support of any change in the lot line. I support a variance and that the lot line stay where it is and his building stay where it is. I do not propose or accept any lot line change; it stays as surveyed.

Ralph Twellman, Bilt Rite Buildings, 120 Route K, Columbia

Ralph Twellman: I was the builder of the building in question. Mr. Whites called me a few years ago and wanted me to build him a building. When the slab was put down Mr. Whites did it the right way he had Boone County come out and inspect it, they passed it so we assumed everything was okay. Based upon the survey that was in error; it was assumed to be okay. When it was determined that it was too close to the property Mr. Whites called me to see what he could do. We looked at it and the situation is that the first 20 feet of this building is closer than two feet; the nearest point is nine inches. The overhang that was on the building encroached over the line so Mr. Whites hired us to remove the overhang. In order to be legal it requires moving the building two feet; I ran some numbers and we were in the \$7000 range. Part of the complication of that is the building floor at the south end is lower than the ground outside so there is a retaining wall on the south end and part of the west end. In order to do this the right way that retaining wall would need to be cut out and footings somehow would need to get under that floor to support where the new wall is going to be where you have the two foot inset. If it was an easy fix, I am sure Mr. Whites would fix it, but this is not an easy fix. We think that the fact he is nine inches off and the fact that it is basically an open lot next door we are hoping the Board will agree that it is worth a variance.

Closed to public hearing.

Member Butcher: Have the applicants discussed this with the surveyor that prepared the survey originally? You hired a professional to tell you where to build the garage and did everything they were supposed to do and yet you still manage to find yourself in this unfortunate circumstance. Have the applicants taken action? Because I think they may need to.

William Whites: I have but he won't answer the phone and at this time he is in Tulsa, Oklahoma, he got his license in 1993 along with the company he worked for here, the owner of the company was with him at the same time.

Member Butcher: We don't need to get into his professional integrity, I just wanted you to know that this is a lot of effort at your expense and you hired professionals, my advice is you might want to seek something after this.

William Whites: I have done everything I possibly could to be right and the east side boundary was also marked incorrectly; I lost five foot on the east side of the property.

Member Robbins: How can this impact the new property owner? If you are looking to sell the property and we grant the variance is it going to impact the new property owner in some way or will it have to be disclosed in the sale?

Member Butcher: Mr. Rodgers only owns to the property line; everything to the property line on the other side belongs to someone else. We are just talking about a setback for safety and utility.

Thad Yonke: The only place it might impact would be on the off chance that the new owner of the lot wanted to build an accessory structure or primary structure close to that, they would have to build a firewall because of the spacing difference between the buildings.

Bill Florea: If it was a 5,000 or 10,000 square foot lot there would be a much larger impact on the neighbor's property; on a lot of this size that circumstance is virtually impossible and not likely to happen.

Member Butcher: This is clearly not the landowners fault.

Member Butcher made and Member Lightfoot seconded a motion to **approve** the request by William and Mary Whites for a variance from the side setback in the R-S (Single Family Residential) district for an existing accessory structure located at 5117 S Brock Rodgers Rd., Columbia:

Member Robbins	Yes	Member Lightfoot	Yes
Member Butcher	Yes		

Motion to approve the request carries unanimously

OLD BUSINESS

None

NEW BUSINESS

None

ADJOURN

Meeting adjourned at 7:36 p.m.

Respectfully Submitted,

Paula L Evans
Secretary

Minutes approved this 25th day of April, 2013