

BOONE COUNTY BOARD OF ADJUSTMENT

BOONE COUNTY GOVERNMENT CENTER

801 E. WALNUT ST., COLUMBIA, MO.

Thursday, December 4, 2014

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

Member Robbins 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: Lance Robbins
Rhonda Lightfoot
Cindy Bowne
David Butcher

Absent: Frank Thomas

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

Minutes of the October 23, 2014 meeting were approved by acclamation.

REQUEST

1. Case Number 2014-007

- a. Request by Ryan Stone for a variance from the front 50-foot setback in the A-1 (Agriculture) zoning district for an existing barn on 20.03 acres and to provide a utility easement along the road, located at 6800 N Route Z, Centralia. (**Zoning Regulations 10.A / Subdivision Regulations Appendix B. 7.1**).
- b. Request by Ryan Stone for a variance from the front 50-foot setback in the A-1 (Agriculture) zoning district for an existing shed on 20.03 acres located at 6800 N Route Z, Centralia. (**Zoning Regulations 10.A**).

Member Robbins asked the applicant if he wished to proceed with the request only having four members present.

Mr. Ryan Stone stated yes.

Member Lightfoot informed the Board that the applicant is a distant family member and she hasn't seen them for several years. Member Lightfoot stated she will gain no profit from this request and it will not influence her vote.

Uriah Mach gave the following staff report:

This 20.03 acre tract is zoned A-1 as is all surrounding property. The site is located on State Highway Z approximately five miles north of I-70; it is 1.2 miles north of Two Mile Prairie School and 1.08 miles south of the State Highway HH intersection with Highway Z. There is a house, barn and large shed on the property. The applicant would like to split the property however the existing barn and shed are too close to the property line and will encroach into the setback. Additionally, the existing barn will prevent the provision of the utility easement required by the subdivision regulations. The original zoning for this site is A-1 (agriculture). These 20 acres were part of a larger agricultural tract. The subject barn and shed are both visible in aerial photographs taken in 1968. Copies of the 1968 aerial photo, along with the 2011 photo are part of the packet. Zoning regulations 10.A. stipulates that structures must be at least 50-feet from the front property line and 15-feet from the side property line. Subdivision regulations appendix B.7.1. Easements, state that utility easements including easements for future use shall be required as deemed necessary by the utility service providers and a minimum of a ten foot utility easement shall be provided along all roads and streets. Staff notified 7 property owners about this request.

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 applicant, Ryan Stone, is interested in subdividing 20.03 acres into two lots. The tract is zoned A-1 (Agriculture) as is all of the surrounding property. A single family dwelling, barn and shed are located on the property. The barn is 3' 6" from the front property line, which is the edge of the right-of-way for State Highway Z. The barn is situated parallel to State Highway Z and is at least 40' wide. Appendix B, 7.1 of the subdivision regulations requires a 10' utility easement adjacent to all roads and streets.

- a) The applicant will incur unnecessary hardship if this variance is not granted. The barn would have to be removed.
- b) Granting this variance will not endanger the health, safety or welfare of the public. The structure has been there for at least 46 years. Staff believes that the utility providers have developed the access they need while taking into consideration the location of this structure.
- c) Granting this variance will not thwart or circumvent the general intent of the regulations. Insuring that access to public utilities is an important function of government; however staff believes that the restrictive A-1 zoning in this area will minimize demand for utility expansion in the future and that development can be designed to utilize available utility corridors.

Staff recommends that this variance be granted.

Present representing the request:

Ryan Stone, 6800 N Route Z, Columbia

Mr. Ryan Stone stated he is trying to separate his land into two tracts. One tract will have the home and lake and the other tract will have the barn and shed. Mr. Stone may build his parents a home there in the future.

Open to public hearing.

Present speaking in favor of the request:

Jerry Stone, 6980 Route Z, Columbia

Mr. Jerry Stone stated he may live there someday. As he gets older he won't need his big house anymore and his son wants him to live closer. The building was there when Ryan Stone bought the property it is a 40 by 100 foot building and will cost a lot of money to replace.

No one spoke in opposition.

Closed to public hearing.

Member Bowne asked how the property was going to be split.

Mr. Mach stated it would be split down the middle to create two 10 acre tracts.

Member Butcher asked staff if there could be two houses built on the property without splitting it because it is 20 acres.

Mr. Florea stated yes.

Member Butcher stated in the subdivision regulations where it says you have to have an easement provided it doesn't say the content of the easement. For instance the easement is not exclusive to Boone County it is possible that the landowner could keep the barn in the easement?

Mr. Florea stated it is a utility easement so there would be an inherent conflict if any utility provider wished to install utilities in that area.

Member Butcher stated they could bore underneath or whatever but it is not exclusive, they could use the property as well and there could be a provision in the easement that allowed them to keep the building there until the building was gone and the easement would be free and clear of any obstructions in lieu of not having an easement at all.

Mr. Yonke asked Member Butcher if he meant to plat the easement through the building.

Member Butcher stated yes.

Mr. Yonke stated he wasn't sure that is allowed in the subdivision regulations.

Member Butcher stated he is not sure that is something that is not allowed in the subdivision regulations. Is the content of the easement explained in the subdivision regulations or does it tell you that you have to provide the easement?

Mr. Florea stated you have to provide the easement.

Member Bowne asked if all the utilities run on the west side of Route Z now.

Mr. Jerry Stone said the water and electric lines run on the west side.

Member Butcher stated he understands that with the building there they won't be able to trench any of the utilities but it is not to say that you couldn't grant the easement and the utility and the building couldn't share the same space.

Mr. Yonke stated he is pretty sure that newly done utility easements can't be obstructed as they are being created.

Member Butcher stated if we were to do it now it would say that it would be free and clear because the utility easement is prepared by County Counselor C.J. Dykhouse or another legal professional. However I think that we could come up with some language that would allow them to continue to use the building then the utilities could have that space and bore under the building and still use the space.

Mr. Yonke stated the regulations stated that it is a 10-foot minimum and the 10-foot be clear. The fact that they are here asking for a variance and one of the variances being asked for has something to do with the utility easement. Mr. Yonke stated he doesn't know if the Board can't see it that way as one of the ways you might be willing to grant something for relief of the utility easement.

Member Butcher stated he is not sure if it should be granted. If there is another option it should be explored.

Mr. Yonke stated if the Board isn't comfortable granting an exemption from the utility easement, if that is what is asked for, the Board is empowered to grant relief as they see fit to accommodate the same concept.

Member Butcher stated if Counselor Dykhouse could come up with some language to allow them to keep the building there until the building disappeared, if that weren't able to be achieved then what?

Mr. Florea stated that needs to be answered before.

Member Butcher stated the need for the utility easement is there and it is written in the regulations that the County needs to have the easement. I think the need is there and I think it can still be provided. I am not sure they would violate the regulations, I don't think they need a variance for this easement. They need a variance from the setback in order to divide the land because they can't physically move the building out of the setback but I don't know that it says anywhere in the regulations that you can't have a building in the easement.

Mr. Florea stated he sees that as bad policy and setting up a conflict between the property owner and the utility companies. Staff does not advise the Board do that at this point.

Member Butcher stated he is not the one that is trying to get the variance.

Mr. Florea stated that Member Butcher is making a decision on a variance. If the decision is no based on that then staff would say that it is a premature decision because staff cannot advise that the county will agree to that type of easement.

Member Bowne stated the utilities run the west side so that leaves cable and sewer that might need a utility easement in the future.

Member Butcher stated it is unpredictable. The fact is that every constituent of the county has to dedicate an easement at some point along their frontage. If we grant a variance from doing it the variance stays with the property and the landowner doesn't have to grant the easement, perhaps ever. Member Butcher stated he is a little leery of what happens when the building is gone and we need the easement, do we even have condemnation power at that point to go across it if we grant this variance from allowing an easement? Member Butcher stated he is not sure we do.

Mr. Florea stated he doesn't believe that will prevent condemnation from happening.

Member Butcher stated he is certain it adds a wrinkle in it. Member Butcher stated he has foresight enough to know that this could be an issue. This is very simple and something we have seen a hundred times with the exception of the easement, usually the buildings are back far enough that it is not a problem. If they were to grant right of way this building would be touching it.

Mr. Mach stated the right of way is probably a 30-foot half-width.

Member Butcher stated we couldn't really grant any relief to go around this building. I have no problem granting a variance for the setback so they can subdivide. They could devise some language that could work for Counselor Dykhouse that could allow them to coexist.

Member Bowne stated when the Board grants a variance in a case like this we grant it for the existing building if we do it with the condition that the building remains as is where is. When the building is gone doesn't the variance go away?

Mr. Yonke stated it could if it is conditioned that way.

Member Bowne stated this isn't the first time we have granted a variance for a building that is within the easement and generally we do it with that condition. Member Bowne stated it is her understanding that the variance is granted only for that specific building and for the life of that building. When the building is gone the variance goes away. If you had a concept review and notified the utilities and they expressed no concern about it then it tells you there is nothing in the plans.

Mr. Yonke stated they were notified about a potential division of property, they were not notified about an encroachment into the easement. They were given a site plan so they could research it.

Member Butcher stated in this particular instance we don't have a sale holding this up. It is reasonable for the Board to say that it is not dead in the water but the utility easement needs more homework. We need to know more about whether or not this is going to cause us a problem in the future with utilities across this property. Counselor Dykhouse may need a conversation in this.

Mr. Yonke stated staff is not going to advise the Board to do it without Counselor Dykhouse's input.

Member Bowne asked the condition of the building.

Mr. Ryan Stone stated it has a concrete floor and is in good shape.

Mr. Jerry Stone stated he is in the real estate business. What we want is a variance for the building, we aren't asking for a variance for the utility easement. That means that the utility easement that goes with the property is still in effect. We just want a variance for the building setback. If the Board doesn't rule on the easement right of way then the easement is still there.

Mr. Yonke stated the applicant will be required to grant a utility easement. The easement doesn't exist yet.

Mr. Jerry Stone asked if it went with the land and the zoning.

Mr. Yonke stated it has to be created. That is why in addition to having the variance for the setback our normal procedure and understanding of the regulation is that the applicant will also need a variance from the requirement that the 10 foot utility easement be granted otherwise it is granting it right through the building. We don't want to set the applicant up for a situation where they get the variance from the setback and then get held up because they also need a variance from the utility easement. We are trying to make sure we get all of the issues taken care of at once so the applicant can proceed with the land division.

Member Butcher stated there are several problems. Mr. Stone, as a land owner has a barn and if an easement was granted the applicant may not be able to borrow money against their property if it turned out there was an easement running through the barn. That is an asset that the bank would consider and they aren't going to insure you against it and it is likely you wouldn't get title

insurance and the applicant could potentially have a problem borrowing money. We want to make sure we aren't forcing the applicant into a situation that is going to cause a problem but on the other hand we have to protect the county and make sure the county has all their interests invested in this too. They've got to be able to get a utility easement; at some point utilities are going to be needed across the property, maybe in fifty years, maybe in two years but at some point they are going to need to get utilities across the front of that property. While condemnation hearings are usually the tools by which we can do it and no other way is able, reality is if we allow the applicant to keep the building there and allow the variance the Board could potentially be putting the county at risk of not getting across the property with utilities.

Member Bowne stated the applicant has the option of building a second home on the 20 acres.

Mr. Jerry Stone asked how you can do that without dividing the property.

Mr. Yonke stated if it is a 20 acre piece or larger it is considered a farm and a farm can have two dwelling units without dividing the property. Just like with the barn, the reason the barn can be that close to the road is because it is on a farm. When you divide it less than 20 acres it no longer constitutes a farm.

Mr. Jerry Stone stated if the property is divided and the Board didn't grant the easement and someone wanted to borrow money against it they might have a problem.

Member Butcher stated yes, if the variance is granted there would be a 20 acre parcel that we would not be able to get an easement across. If the variance was granted it may not be a problem for the applicant but the county may have a problem. If we don't grant the variance and the applicant grants an easement across it then what happens is the applicant borrows against it and the title company gets a title insurance policy on it and they will want to know the easements. The surveyor will put the easement across the building and the title company may not insure the property. If the applicant doesn't get insurance the lender will consider you a high risk borrower and will get a higher interest rate or may get denied the opportunity to borrow money at all.

Mr. Yonke stated the Board will be on shaky ground granting a variance for the entire property when there are no grounds for not granting a utility easement. If the applicant is doing the division the easement needs to be granted along the entire property line that does not have an encroachment. The Board is not granting a blanket variance to the entire 20 acre property because there are no grounds for that. Where there is not a building in it, it is no different than other piece of ground in the county. You have to have a unique circumstance to grant a variance and it has to be the minimum amount to grant relief.

Member Butcher stated the request states the applicant would like a variance to provide a utility easement along the road for the 20.03 acre parcel.

Mr. Yonke stated they can ask for it but the Board can't really grant it for the entire piece.

Member Bowne stated the variance for the easement was added in to make everything work out to meet code.

Mr. Yonke stated yes; so the applicant wouldn't have to come back.

Member Bowne stated she doesn't have a problem granting the variance. Member Bowne stated if she thought that there were utilities that needed to go through there it might influence her decision but Member Bowne has not heard that or heard rumors of that. The location isn't in an area where a central sewer system is geared to go so that would be years down the road. If the utility needed to go through they would knock the building down and do it. But the applicant does have the option of not going through all of this and not divide the property and still build the house.

Member Bowne made and Member Butcher seconded a motion to **approve** the request by Ryan Stone for a variance from the front 50-foot setback in the A-1 (Agriculture) zoning district for an existing barn and shed on 20.03 acres located at 6800 N Route Z, Centralia **with the following condition:**

1. 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 Bowne	Yes
Member Butcher	Yes	Member Lightfoot	Yes

Motion to approve the request carries unanimously

Member Bowne made and Member Lightfoot seconded a motion to **approve** the request by Ryan Stone for a variance from the requirement to provide a utility easement under the footprint of the front building along the road, located at 6800 N Route Z, Centralia **with the following condition:**

1. 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 Bowne	Yes
Member Butcher	No	Member Lightfoot	Yes

Motion to approve the request carries 3 YES 1 NO

OLD BUSINESS

- Certificate of Decision - Case # 2014-004 CCF Rentals
- Certificate of Decision - Case # 2014-005 Kevin & Deborah George
- Certificate of Decision - Case # 2014-006 John & Briana Roche

The certificates were approved and signed by Vice-Chairperson Robbins.

NEW BUSINESS

None

ADJOURN

Meeting adjourned at 7:40 p.m.

Respectfully Submitted,

Paula L Evans
Secretary

Minutes approved this day of , 2014