

BOONE COUNTY BOARD OF ADJUSTMENT

BOONE COUNTY GOVERNMENT CENTER

801 E. WALNUT ST., COLUMBIA, MO.

Thursday, April 23, 2015

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
Lance Robbins
Cindy Bowne
Rhonda Lightfoot

Absent: Vacant Seat

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

Minutes of the March 26, 2015 meeting were approved by acclamation.

REQUEST

1. Case Number 2015-003

Request by Allen and Judy Ronnebaum for a variance from the requirement to provide a minimum 50' setback in A. J. Green Acres Planned Development on 22.94 acres located at 3125 N Rte Z, Columbia (**Zoning Regulations Section 6.6.4**).

The applicants stated they wished to continue with the hearing tonight having only three Board members present.

Planner, Uriah Mach gave the following staff report:

The property is currently zoned A-1P, the County Commission has tabled an application and review plan for A-2P zoning; the surrounding property is zoned A-1. This site is located two miles east of Columbia and 1.5 miles north of I-70, there is a house and a detached accessory structure on the property. This tract is part of A.J. Green Acres Planned Development that was approved in 2006. A planned development is required to provide a front yard setback for the entire perimeter of a property. The setback in the A-1 and A-2 district is 50 feet. An accessory structure has been built in the setback. The original zoning for this tract is A-1. In 2006 the applicants requested that 26.89 acres be rezoned A-1P and a review plan, final plan, and subdivision plat for A.J. Green Acres was approved. A.J. Green Acres created two lots; lot 1 is a 22.94 acre tract (subject tract) that has a house that was built in 1999; and lot 2, a 3.58 acre tract with a house that was built in 2007. Subsequent to approval of A.J. Green Acres, the applicant built an accessory structure within the required setback shown on lot 1. A building permit was not issued for this structure as it was built as an agricultural exemption under the building code being a tract greater than 20 acres and the structure more than 75 feet from the dwelling. The requested variance is from zoning regulations 6.6.4 "Yard, setback, height, and lot size requirements. The minimum yard, setback, minimum lot size and maximum height requirements of the district in which the development is located may be varied upon approval by the Commission except that minimum setbacks equal to a front yard setback for the corresponding non-planned parent zoning district shall be provided around the boundaries of the planned development." Staff notified 19 property owners.

Present representing the request:

Kevin Schweikert, Brush & Associates, 506 Nichols St, Columbia
Allen Ronnebaum, 3125 W Route Z, Columbia

Mr. Schweikert stated the applicant has an accessory structure that is within the 50-foot perimeter setback. The zoning regulations require a perimeter setback the same as the front setback. Mr. Schweikert stated he believed the intent of this requirement is to protect neighboring property owners in more dense areas. The reason this area is more densely populated is because of the three acre tract on the southeast corner. Of the two tracts that the applicants are proposing to create one will be 12.93 acres, the other lot is 10 acres and both of those sizes are equivalent to A-1 zoned property.

Mr. Ronnebaum stated when he built the barn he went to the Planning Commission and asked what the setback is and was told it was 15 feet so he built the barn 25 feet from the side property line. Mr. Ronnebaum stated if he had known the setback was supposed to be 50 feet he would have constructed it there. It will cost a lot of money to tear down the barn and move it.

Mr. Schweikert stated the side setback in A-1 zoning is 15 feet.

Mr. Ronnebaum stated when someone with the Planning Commission said that the setback was 15 feet he believed it.

Mr. Schweikert stated there was a mistake on both sides, the applicant was given information that wasn't accurate and he didn't investigate it further.

Open to public hearing.

No one spoke in favor or opposition to the request.

Closed to public hearing.

Member Thomas asked the size of the building.

Mr. Ronnebaum stated 40 by 60.

Member Thomas asked if the building was completely in the setback.

Mr. Schweikert stated yes.

Member Bowne asked what the building is being used for.

Mr. Ronnebaum stated it is a garage for his truck business.

Member Bowne asked if the building had electricity.

Mr. Ronnebaum stated yes.

Member Bowne asked how the applicants got electric without a permit.

Mr. Ronnebaum stated it is run from the meter on the house.

Member Bowne asked staff if that was how it is supposed to be done.

Mr. Florea stated no.

Mr. Yonke stated that using it as a garage for a truck business is a zoning violation. There should have been a building permit. It only qualifies as an agriculture structure if it is used strictly for farm use. Had the applicant come to obtain a permit staff would not have issued it because it was in the setback.

Member Bowne asked when the building was constructed.

Mr. Ronnebaum stated four years ago.

Member Bowne stated the Board was provided with a copy of the 2006 plan.

Mr. Mach stated that was the approved plan.

Member Bowne stated the 2006 plan created by Brush & Associates shows a 50 foot building line all the way around the property. Member Bowne stated she doesn't understand how the applicants can say that they didn't know that the building setback was 50 feet. The applicant signed the plan and likely have a copy of it.

Mr. Ronnebaum stated he probably did have a copy of the plan however when he went to obtain the building permit he was told the setback was 15 feet.

Mr. Yonke stated staff was told the building was for agricultural purposes however the applicant has stated that it is not for agricultural use. The zoning of this property is A-1P which is different from A-1. The side yard setback in A-1 is 15 feet so if staff were asked the side setback in A-1 staff would answer that it is 15 feet.

Mr. Schweikert stated the building is in the setback and what ever decision the Board makes today the building is still going to be in the setback; this needs to be corrected some how, the applicants are not tearing down the building.

Member Robbins asked staff what the options were.

Mr. Yonke stated this particular incidence is a zoning violation so the County could pursue having the building taken down however zoning violations are complaint based and staff hasn't received a complaint. The applicant wants to change their plan to get an additional structure and if the variance isn't granted the choice will be to tear the building down so the applicants can keep moving forward to get the additional lot or leave everything the way it is.

Member Robbins stated the Board doesn't have any justification for approving the variance.

Mr. Yonke stated not according to the way the rules are written. The criteria has to be a deprivation of use of the property and there is no deprivation of use.

Mr. Ronnebaum stated the applicants are trying to divide off 10 acres. The back lot isn't going to be developed.

Mr. Schweikert stated the applicants plan is to create a 10 acre lot and that is mostly to create a 12.94 acre piece with the existing house and barn so the 12.94 acre piece can be sold more readily. The applicant doesn't plan to sell the 10 acres.

Member Bowne asked if lot 2 was already in existence.

Mr. Mach stated yes.

Mr. Yonke stated it encumbers 7 acres to make up the full 10 acres for the density. The A-1P is maxed out which is why the applicants applied for rezoning to A-2P.

Member Bowne stated the choice is either take the building down to be in compliance so the applicants can move on to plat the property or leave the building up and leave the property as it is. Staff has said that it is already out of compliance but they are not going to pursue it.

Mr. Yonke stated if staff receives a complaint they will have to pursue it. The building is not an agricultural structure if it is being used for anything other than exclusive agricultural purposes

which means it would have to be for a tractor, combine, or hay, it can't be used for a garage, shop, or business. Otherwise it is required to have a building permit.

Joining the discussion:

Judy Ronnebaum, 3125 W Route Z, Columbia

Mrs. Ronnebaum stated the applicants have tractors; all we have to do is change which barn things are in if that is what the problem is.

Mr. Yonke stated that would solve the problem for the agricultural structure and requiring it to have a county permit.

Mrs. Ronnebaum stated the applicants have other barns.

Member Bowne stated whether it is an agricultural structure or not it is still within the 50 foot setback.

Mr. Yonke stated that is still a zoning violation.

Mr. Schweikert stated the only issue here is the barn being within the setback.

Member Robbins stated that even if the Board wanted to it doesn't seem that the Board has the authority to grant the variance.

Member Thomas stated the Board doesn't have a reason to.

Mrs. Ronnebaum stated the applicants went to Planning and Zoning and asked about the setback requirement.

Member Thomas stated the applicants have a signed document that says the setback is 50 feet.

Member Bowne stated the applicants may have inquired about A-1 zoning but the property is zoned A-1P.

Mrs. Ronnebaum stated originally it was zoned A-1.

Mr. Schweikert stated he understands the letter of the law and in planned zoning districts you usually have a higher density and that is the reason for the larger perimeter setback. In this case it isn't that high of a density, it is appropriate in this case to have the barn 15 foot from the property line. The two lots are appropriate for A-1 zoning and the applicants are asking for relief for a mistake that was made. The barn fits within the area.

Member Bowne stated the barn doesn't fit within the constraints that this Board is governed by.

Mr. Schweikert stated the Board would have to look at the heart of the zoning ordinance and its intent.

Member Bowne stated that is not something the Board can do. The Board has specific things that they can grant a variance for. If it were someone's house and they were living in it and we told them

they couldn't live in it anymore and they would lose their home that would be an exceptional circumstance.

Mrs. Ronnebaum stated the property was originally zoned A-1 and the barn would have been okay.

Mr. Yonke stated the applicant still would have needed a variance for the barn when they rezoned to A-1P.

Mr. Schweikert stated a mistake was made, an expensive one. It could be even more expensive depending on the Board's decision. It seems, for the public benefit, the Board should be able to look at the circumstances surrounding it and whether or not it is a detriment to the zoning ordinance. The applicant's don't see that this barn will cause any problems in the future.

Mr. Florea stated the applicants have to prove that there is an undue hardship and all this does is prevent the applicants from rezoning their property.

Mr. Yonke stated the hardship has to be based on a deprivation of use and not a deprivation of money. Money is specifically listed as something that cannot be considered a hardship.

Mr. Schweikert asked with the barn being within the perimeter setback will that hinder the applicants from selling the 22.94 tract.

Mr. Yonke stated if the buyer calls to ask if the barn is in compliance staff will have to tell them no.

Mr. Schweikert stated that could be considered a hardship in the future.

Mr. Yonke stated the hardship cannot be based on financial purposes.

Member Bowne made and Member Robbins seconded a motion to **deny** the request by Allen and Judy Ronnebaum for a variance from the requirement to provide a minimum 50' setback in A. J. Green Acres Planned Development on 22.94 acres located at 3125 N Rte Z, Columbia

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| Member Thomas | Yes | Member Robbins | Yes |
| Member Bowne | Yes | Member Lightfoot | Yes |

Motion to deny the request carries unanimously

OLD BUSINESS

- Certificate of Decision - Case # 2015-001 Tom McBride
Case #2015-002 a. Thelma June Willis
Case # 2015-002 b. Willis Joint Living Trust
Case # 2015-002 c. Market Ready LLC

The certificates of decision were accepted and signed by the Chairperson.

NEW BUSINESS

None.

ADJOURN

Meeting adjourned at 7:38 p.m.

Respectfully Submitted,

Paula L Evans
Secretary

Minutes approved this 28th day of May, 2015