

BOONE COUNTY BOARD OF ADJUSTMENT

BOONE COUNTY GOVERNMENT CENTER

801 E. WALNUT ST., COLUMBIA, MO.

Thursday, March 24, 2016

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
Rhonda Lightfoot
Cindy Bowne
Lance Robbins

Absent: Denny Stephenson

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

Minutes of the January 7, 2016 meeting were approved by acclamation.

REQUEST

1. Case Number 2016-001

Request by James and Vicki Brocksmith for a variance from the setback requirements in the A-R (Agriculture-Residential) zoning district for a garage addition located at 7390 E North Shore Drive, Hartsburg (Zoning Regulations 10.A)

Planner Bill Florea gave the following staff report:

The property is zoned A-R as is the adjacent zoning. The tract is located approximately five miles south of Ashland and 3.5 miles east of Hartsburg. Access to the site is from Westbrook Drive to Champetra to North Shore Drive. Neither Champetra nor North Shore Drive are county maintained roads. There is a single family dwelling on this tract. The applicants are requesting a variance from the setback requirements of the A-R district. The A-R district requires a front setback of 25 feet and a side setback of 6 feet. The original zoning for this area is A-R. The site is part of Champetra Lake Northshore Section 2 which was platted in 1972. North Shore Drive is a publically dedicated, but privately maintained road. The plat shows a right-of-way width of 40 feet. In 2012 the applicants received a variance to permit the construction of a carport that extended into the front setback. The requested variance is from Zoning Regulations Section 10.A which requires that structures in the A-R zoning district provide at least a 25 foot setback from the front and rear property lines, and a 6 foot setback from the side property line. With a 40 right-of-way, a structure would be required to be 45 feet from the center of the road. The application includes a drawing that shows the location of the proposed garage. The location appears to extend into the right-of-way for North Shore Drive. Staff notified 24 property owners.

Present representing the request:

Jim Brocksmith, 7390 E North Shore Drive, Hartsburg
Vicki Brocksmith, 7390 E North Shore Drive, Hartsburg

Jim Brocksmith: We are requesting a variance from the Board for a garage on the south side of the house. We have been working with our builder, Jason Watts, who did the addition for us previously and we have been discussing options. We don't own enough land on the north side to place a garage so this was the only place we could do it. The property is a huge sloping area and it would be very difficult to dig out anything closer to the house to accommodate this. A number of the homeowners out there also have received variances. One of the reasons a lot of us out there want to put a garage closer to the road is because everything slopes down and in the winter time the road gets cleared but everyone has to take their car and pull it up to the top of the driveway to make sure they can get out. The reason we want a garage closer to the road is for easy access in the winter.

Vicki Brocksmith: When we park at the top of the hill the snow plow has to go around the cars; this way we can leave the roadway clear.

Jim Brocksmith: The main thing is that the topography makes it difficult to be in compliance.

Vicki Brocksmith: There were pictures of the proposed garage included with the application to the Board.

Open to public hearing.

No one spoke in favor or opposition to the request.

Closed to public hearing.

Member Bowne: Is the proposed garage going to replace the carport?

Jim Brocksmith: No, the carport is going to stay.

Chairperson Thomas: How much of the structure will be in the setback?

Jim Brocksmith: 15 feet from the edge of the road.

Bill Florea: That would put it in the right of way.

Thad Yonke: The Board can't grant a variance for a building to be in the road right of way.

Member Bowne: How wide is the road?

Bill Florea: 40 feet. There is a 40 foot right of way for the road that is publically dedicated so theoretically the road would be centered in the right of way so it is 20 feet from the center line of the road. If the building is only 15 feet from that then the building would be extending five feet into the right of way.

Jim Brocksmith: We are 15 feet from the edge of the road, not from the center.

Member Bowne: So the building will be 35 feet from the center of the road.

Jim Brocksmith: It will be 15 feet from the property line.

Bill Florea: It may be worthwhile for a surveyor to locate the property line.

Jim Brocksmith: We have had that done; they put a pin on the edge of the road. There is an electric box on the edge of the road and it is right where that line is on the edge of the road.

Bill Florea: If the Board grants the variance tonight it will be for a specific distance and when staff measures the setback to the building and it is not correct then the applicants will have to come back to the Board and request another variance.

Member Bowne: The building will be 15 feet off the edge of the road, the road is 40 feet wide so the applicants are asking for a variance of 10 feet.

Bill Florea: If the road is centered in the right of way.

Thad Yonke: Did the surveyor give the applicants a drawing or did he just locate the pins?

Jim Brocksmith: He gave a drawing.

Thad Yonke: Do you know if it was recorded.

Jim Brocksmith: I am pretty sure he did.

Thad Yonke: If it was recorded it would be a lot easier to work with.

Vicki Brocksmith: I don't think he recorded anything.

Member Bowne: Who maintains the road?

Jim Brocksmith: The Homeowners Association.

Member Bowne: Have the applicants gone to the Homeowners Association with this request.

Jim Brocksmith: Yes; it was approved as long as they receive a variance.

Member Bowne: Will a building that close to the road cause a problem with site distance?

Vicki Brocksmith: The curve is further down the road; there will be no site distance issues.

Chairperson Thomas: Do the applicants need a variance for the building being in the front plane of the house?

Bill Florea: No; it is connected to the house.

Member Bowne: How far will the building be from the side property line?

Jim Brocksmith: Eight or nine feet.

Member Bowne: Are there any utilities that run along the road?

Jim Brocksmith: No. Gas is on the other side of the road, just the electric and possibly the phone line.

Member Bowne: What about water?

Jim Brocksmith: We are on a well.

Jim Brocksmith: The garage is going to be about 3 feet below the level of the road and that level will run into my second story.

Member Bowne: Are there any culverts or drainage ways that go through that area that may be blocked?

Jim Brocksmith: Between our house and the other house there is a culvert that comes across the road, it slopes down into a ravine and goes between us.

Member Robbins: Does staff have any concerns with this?

Thad Yonke: Not if they verified with a surveyor where the pins are because that was going to be the only condition staff would have requested. We would have needed that information out in the field when our inspectors go out to verify it because they can't tell where the property lines are otherwise.

Member Robbins: Does that need to be included in any motions that are made?

Thad Yonke: That is part of the building code process. When they apply for a permit the applicant is supposed to stake their property lines; in most cases they don't do it or they don't know where the property lines are.

Member Bowne: There is an inspection point before any construction that you would see that it falls within the property line?

Thad Yonke: Uriah would go out for a setback inspection in this particular case.

Vicki Brocksmith: I highlighted some cases in the area that have issues with that.

Member Bowne: Each case is evaluated in its own merit, each case is different, the Board doesn't set precedent that is built off of, each case is looked at individually.

Member Robbins made and Member Thomas seconded a motion to **approve** the request by James and Vicki Brocksmith to allow construction of a garage within 15 feet of the front property line in the A-R zoning district for a garage addition located at 7390 E North Shore Drive, Hartsburg:

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

Motion to approve the request carries unanimously

OLD BUSINESS

1. Case Number 2015-013

Request by Seth Reynolds for a variance from the front setback of 25' in the R-S zoning district on 1.36 acres, more or less, located at 5146 N Creasy Springs Rd., Columbia (**Zoning Regulations, Section 10. A.**).

Knowing that there would not be a full Board tonight Mr. Reynolds has opted not to be heard at this meeting.

2. Certificate of Decision - Case Number 2015-012 Request by Ronald and Vicci Brandel.
3. Certificate of Decision - Case Number 2015-014 Request by Robert & Frances Wise (item added to agenda 3/24/16)

Both Certificates of Decision were accepted and signed by the Chairperson.

NEW BUSINESS

- Amend Board of Adjustment By-laws Section 4.F.
(in re: Optional Continuance of Hearings)

Thad Yonke read the following into the record:

There is a provision in the by-laws that provides an applicant the opportunity to be heard by the entire membership of the Board of Adjustment. Section 4(F) states:

F. Optional Continuance of Hearings -- When there is a meeting scheduled to be held, and there is a quorum, but one or two members of the Board are not present at the meeting, any applicant or appellant making an application or appeal may request that the hearing and decision on his application or appeal be continued until such time as the full Board is in attendance, and the Chairperson shall grant such continuance. The Chairperson shall, in all cases where the one or two members of the Board are not present, inform all applicants or appellants who are present at the meeting of this option available to them. In the case of such continuance, a continuance shall be announced by the Chairperson and the case shall be continued until the next regular time of meeting of the Board.

As you are aware, there have been meetings where the entire Board has been unable to attend. An applicant that exercises the above option can effectively stay any action on a request almost indefinitely, which delays projects and other actions.

County Legal Counsel, C.J. Dykhouse, has researched this issue and can find nothing in Missouri law that provides for this procedure. Mr. Dykhouse has recommended that this entire section be deleted from the by-laws - thus allowing any request to proceed as long as a quorum is present.

Section 13 of the by-laws requires four positive votes to amend the regulations.

Staff recommends that Section 4(F) Optional Continuance of Hearings should be deleted from the by-laws.

Member Robbins made and Member Lightfoot seconded a motion to delete Section 4(F) Optional Continuance of Hearings from the Zoning Board of Adjustment By-laws

Discussion:

Member Bowne: I assume this would not affect the case that is being postponed until we have a quorum since that choice was offered to them prior to this.

Bill Florea: That option would terminate if the change is made.

Member Bowne: It will be in effect immediately.

Thad Yonke: The Reynolds request would be heard at the April 2016 meeting as long as a quorum was present.

Member Bowne: Is the County Commission aware of this proposed change is being discussed?

Thad Yonke: I don't know.

Member Bowne: We won't have all five members here next month. So if we pass this the applicants are going to feel targeted and I understand that they are not the only applicant in the worlds history that has encountered this but they are going to feel targeted. Is Mr. Dykhouse confident that we are on good standing to make it effective immediately and that it will apply to any pending cases?

Bill Florea: He wouldn't have made the recommendation if he wasn't confident.

Member Bowne: Is he aware that there is a pending case?

Bill Florea: Yes.

Voting was as follows:

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

Motion to carries unanimously

ADJOURN

Meeting adjourned at 7:35 p.m.

Respectfully Submitted,

Paula L Evans
Secretary

Minutes approved this 28th day of April, 2016