

BOONE COUNTY BOARD OF ADJUSTMENT

BOONE COUNTY GOVERNMENT CENTER

801 E. WALNUT ST., COLUMBIA, MO.

Thursday, April 28, 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.

Roll call was taken:

Present: Frank Thomas
Rhonda Lightfoot
Cindy Bowne
Denny Stephenson

Absent: Lance Robbins

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

Also Present: Ron Sweet, Assistant County Counselor
Stan Shawver, Director
Matt Thomas, County Surveyor

Minutes of the March 24, 2016 meeting were approved by acclamation.

REQUEST

1. Case Number 2016-002

- a. Request by John & Amy Welch for a variance to allow an accessory structure in the A-R (agriculture residential) zoning district to be constructed on a lot smaller than 5 acres without a primary structure located at 15202 Old Number 7, Harrisburg (**Zoning Regulations 7.A.5**)
- b. Request by John & Amy Welch for a variance to allow an accessory structure in the A-R (agriculture residential) zoning district to be constructed in the front plane of a future house located at 15202 Old Number 7, Harrisburg (**Zoning Regulations 7.A.5**)

Planner Thad Yonke gave the following staff report:

The property is located in the SE ¼ of Section 10, Township 50N, Range 13W, the tract is 1.8 acres and the parcel number is 06-204-10-02-005.00. The current zoning is A-R, zoning to the north, east and south is also A-R, zoning to the west is A-2. This site is located north of State Highway 124 approximately 1.5 miles west of Highway 63. The tract is currently vacant. The applicants are requesting two variances. Variance a) the applicants want to build an accessory structure on a tract smaller than 5 acres prior to building the main structure. Variance b) The location of the proposed accessory structure will be in front of the front plane of the proposed main structure. The subject tract is located in Country Boy Estates subdivision which was platted in 1976. The original zoning in this area is A-R. A house was built on the subject tract in 1976 or 1977. The house was destroyed by fire. The requested variance for request A. is from zoning regulations 7.A.5 - lots smaller than 5 acres cannot have an accessory structure until a primary structure is built. The requested variance for request B. is from zoning regulations 7.A.5 - an accessory structure cannot be erected in front of a main building unless it is attached to the main building by a common wall. Staff notified 25 property owners.

Chairperson Thomas asked if staff heard from any neighbors.

Uriah Mach stated he took a couple of phone calls but once the request was explained there didn't seem to be an issue.

Present representing the request:

John Welch, 15202 Old Number 7, Harrisburg

Amy Welch, 15202 Old Number 7, Harrisburg

Amy Welch: We bought the property last summer and we currently have a home in Hallsville. The plan is to build a pole barn and empty our home and have a place to store our stuff to get our house ready to sell so we can build. We really need the variance to be in front because the previous home was in the center of the property and that is the lake view and that is why we bought the property.

The applicants presented pictures of the property.

Amy Welch: We would rather the shop not have the lake view, we would rather it be the home. Technically it is not in front of the house; it is on the upper west side of the property. When you look at the property you can see where the previous home sat and it is not behind where the shop would be built. One of the photos is from google earth which shows the location of the previous home and that is where the new one would be built. Currently there is a big hole, it was a basement

home and when fire destroyed it they had to remove all of that so there is a very large hole where we would build the house with the basement to go right back in that spot.

Open to public hearing.

No one spoke in favor or opposition to the request.

Closed to public hearing.

Chairperson Thomas: So the house is going to go where the previous house was.

Amy Welch: Yes.

Chairperson Thomas: Where is the pole barn going to go?

John Welch: There has already been some dirt work done. It is in the top corner of the property.

Amy Welch: It is the top west area of the property.

Member Bowne: What is the structure that is sitting there now?

John Welch: It is the old existing garage.

Amy Welch: They tore everything out except for this existing structure which we plan to use during construction. We had a surveyor locate the property line and it is about 60 feet away. The main reason is we don't want the shop to have the nice view.

Member Bowne: The purpose of building the shed now is so you will have a place to put your stuff?

Amy Welch: Yes. Also my son and husband like to tinker with cars and they are rebuilding a pickup that they have and they like to have a place to put it. It is one thing to have storage with the house stuff but we would like to have a place to put the vehicle other than a storage unit.

Member Bowne: Why can't you use the existing building to store stuff?

Amy Welch: It is not big enough. It holds maybe one car.

John Welch: I have two in my garage now plus other stuff.

Amy Welch: It is more of a lawn equipment space. It has a garage door but it is not large enough.

John Welch: It is not weatherproof.

Chairperson Thomas: What is the width of the lot?

John Welch: 172 feet across the front.

Chairperson Thomas: Is the bare spot the place where the house is proposed to go?

John Welch: It is where the previous house was located and it is where the new one will be placed. There is an existing septic system there as well.

Chairperson Thomas: Is there not enough space to put a pole barn to the north of the house?

John Welch: No.

Member Bowne: Do you plan to use the existing septic system for the new house? Has it been approved by the Health Department?

John Welch: Not yet.

Member Bowne: So we don't know that they will approve that septic tank.

John Welch: Not yet.

Amy Welch: We don't plan to connect the barn to plumbing.

Member Bowne asked staff to show the topography map.

Chairperson Thomas: What is the size of the proposed pole barn?

John Welch: 30 x 40.

Member Bowne: What size will the house be?

John Welch: 1500 square feet with a walkout basement.

Member Stephenson: When will the applicants start construction of the house?

John Welch: As soon as the house in Hallsville sells.

Member Bowne: I have several problems with this request. We have a regulation that we don't put a structure without an existing house and there is no guarantee that it will happen. If we allow a structure out there and the applicants don't build a house then we have a structure there that may or may not be maintained. That is the reason that regulation is in effect. The other problem is that there isn't a hardship here. The applicants want a place to store their stuff so they can sell their house and build another one. It is not like their house just burned down and they have to have a place to their belongings so I don't see that as a hardship. I don't see the topography being such that you couldn't rearrange the layout and put the shed to the north side of the house and move the house a little bit. The applicant indicated the property is 172 feet wide.

John Welch: It does narrow as it comes down.

Member Bowne: It narrows some but not a lot.

John Welch: Even if we pull the permits at the same time? Would that solve the issues?

Chairperson Thomas: Have the applicants worked with anyone to see if they can get the pole barn to fit within the regulations?

John Welch: There is a big gully in between that washes down. I had 50 loads of dirt hauled in just to level out that part of the property.

Amy Welch: It goes downhill.

John Welch: That is the only spot for the shop.

Amy Welch: There is a ditch that runs through the property. There are also large oak trees that would have to be removed.

Chairperson Thomas: But the issue is the Board could grant a variance to build the pole barn and the applicants may not build the house. I don't think we have a lot of recourse after that if the variance is granted.

Member Bowne: It also looks like there is a ditch that goes down through the building site and that is a low place also?

John Welch: It is on the opposite side and goes down into the lake. The house actually sits on top of the hillside.

Member Bowne: It goes against everything that was in the regulations. The applicant asked if it would be possible if they were built at the same time, that still doesn't get rid of the issue of it being in front of the house but that is more agreeable to some people than have it there and it possibly being abandoned. The other choice is to build the garage differently and attach it to the house then it can be closer to the road which keeps the house with the view and the garage can be used for storage.

Amy Welch: Aesthetically I would prefer to have the pole barn up front. I would do both at the same time if I could have the pole barn up front and not attached to the home. I would prefer that option.

Member Bowne: Has any staff visited the site?

Bill Florea: I don't believe so.

Member Stephenson: The biggest problem we would face is what happens if we allow the shed and your house doesn't sell in Hallsville.

Member Bowne made and Member Thomas seconded a motion to **deny** the request by John & Amy Welch for a variance to allow an accessory structure in the A-R (agriculture residential) zoning district to be constructed on a lot smaller than 5 acres without a primary structure located at 15202 Old Number 7, Harrisburg:

Member Thomas	Yes	Member Bowne	Yes
Member Lightfoot	Yes	Member Stephenson	Yes

Motion to deny the request carries unanimously

Chairperson Bowne: We as a Board don't generally go out to look at the sites. It is the applicant's job to provide the evidence to make a decision. I did not see photos that show the ditch that the applicants mentioned. What I see is two depressions on a topography map, one is where the applicants want to put a house and the other is behind where the applicants want to put a shed. Without a picture showing me that there is a problem with the topography I can't say that is the case. I understand wanting a view of the lake but I haven't found where that is written into something that we can issue a variance for. Aesthetically pleasing is not one of the things, topography is.

Member Thomas made and Member Lightfoot seconded a motion to **approve** the request by John & Amy Welch for a variance to allow an accessory structure in the A-R (agriculture residential) zoning district to be constructed in the front plane of a future house located at 15202 Old Number 7, Harrisburg:

Member Thomas	Yes	Member Bowne	NO
Member Lightfoot	Yes	Member Stephenson	Yes

Motion to approve the request carries 3 YES 1 NO

2. Case Number 2016-003

- a. Request by Michael Covington for a variance from the minimum lot width in the R-S (single family residential) zoning district located at 6481 S Old Village Road, Columbia (**Subdivision Regulations, Appendix B 1.8.2, Table A**)
- b. Request by Michael Covington for a variance from the maximum lot depth to width ratio in the R-S (single family residential) zoning district located at 6481 S Old Village Road, Columbia (**Subdivision Regulations, Appendix B 1.8.2, Table A**)

Planner Bill Florea gave the following staff report:

The tract size is 4.9 acres and the parcel number is 20-313-11-00-003.00. The current zoning is R-S and the adjacent property to the north is R-S and A-R, to the east is R-S and city of Columbia zoning A-1, to the south is city of Columbia zoning A-1 and R-1, to the west is city of Columbia zoning R-1. This site is located south of Columbia approximately 1000 feet north of State Highway K. There is a single family dwelling on the property. The applicant owns this 4.9 acre tract as well as a 9.75 tract to the north that also has a house. The applicant wants to reduce the 9.75 acre tract to 5 acres attaching the balance to the subject tract which will create a 9 acre tract. Variance a) is because the width of the newly reconfigured lot is less than 150 feet, (the lot is 140 feet wide) as required. Variance b) is because the maximum lot depth will exceed 3 times width (new lot will be more than 420 feet deep). The original zoning for this area is R-S. This parcel was created by survey in 1963. The Assessor's records estimate that the house was built in 1980. The requested variance A is from subdivision regulations Appendix B 1.8.2, Table A - lots larger than 2.5 acres required to be at least 150 feet wide at the building line. The requested variance B is from Subdivision Regulations, Appendix B 1.8.2, Table A - the maximum lot depth is three times the width of the lot. Staff notified 112 property owners.

Present representing the request:

James Jeffries, Allstate Consultants, 3312 LeMone Industrial Blvd, Columbia

Mike Covington, 6305 Old Village Rd, Columbia

James Jeffries: Mr. Covington came to our office he owns two lots and would like to sell the northern tract and make the northern tract smaller around the house and attach the sum of the acreage to the southern lot. This is sort of a glorified lot line adjustment survey. In order to do it we need to go through the subdivision process because the lots are smaller than 10 acres. One tract is going to be 9 acres the other is going to be 5 acres. We are not looking to subdivide anything at this point. We just want to be able to sell the house to the north and 5 acres. The survey was done on the tract to the south in 1963; the lot is 140 feet wide along Old Village Road. We don't know why it was configured like it was.

Open to public hearing.

Present with questions:

Linda LaFontaine, 6307 S Old Village Rd, Columbia

Linda LaFontaine: I was curious about what easement will be used to access the proposed subdivision and how will it affect those who live on Old Village Road? Will there be access from Old Village Road? How will it impact those of us on that road when it is subdivided?

Member Bowne: I had the same question of how the five acres will be accessed. There is a driveway there now.

No one spoke in favor or opposition.

Closed to public hearing.

James Jeffries: As you drive by you won't notice anything different because the houses and driveways are staying the same as they are. The northern tract is accessed by a private drive, there is an easement going across the tract in front of it.

Member Bowne: There is a recorded easement through the lot in front?

Mike Covington: Yes.

James Jeffries: The front portion of the drive is county owned.

Member Bowne: What is the acreage requirement in R-S?

Uriah Mach: 7000 square feet if there is a central sewer system, otherwise 2.5 acres with an onsite system.

Member Bowne: Are there existing houses on both lots?

Mike Covington: Yes.

Member Bowne: Is the tract to the south a legal lot?

Bill Florea: Yes, it was created in 1963 prior to zoning.

Member Bowne: If we didn't add the four acres onto the southern lot and just made a separate lot that was four acres would that be legal?

Bill Florea: No.

Thad Yonke: If any of the lots out of the parent two tracts are less than five acres then none of them can use a private drive easement.

Member Bowne: So that means this could never be subdivided in the future.

Bill Florea: Not unless there is a public road built.

James Jeffries: The applicants are not asking to subdivide at this time.

Member Stephenson: Is the easement recorded?

James Jeffries: I don't have it with me.

Mike Covington: I owned the property in front of the northern tract; I transferred it to my mother by family transfer and reserved an easement across her property.

Member Thomas made and Member Lightfoot seconded a motion to **approve** the request by Michael Covington for a variance from the minimum lot width in the R-S (single family residential) zoning district located at 6481 S Old Village Road, Columbia:

Member Thomas	Yes	Member Bowne	Yes
Member Lightfoot	Yes	Member Stephenson	Yes

Motion to approve the request carries unanimously

Member Bowne made and Member Stephenson seconded a motion to **approve** the request by Michael Covington for a variance from the minimum lot depth to width ratio in the R-S (single family residential) zoning district located at 6481 S Old Village Road, Columbia:

Member Thomas	Yes	Member Bowne	Yes
Member Lightfoot	Yes	Member Stephenson	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.**).

Planner Bill Florea gave the following staff report:

The tract size is 1.36 acres with tax parcel number 11-603-23-05-001.00. The current zoning is R-S, adjacent zoning is A-R to the north, to the east R-S, to the south R-S, and to the west is R-S. This site is located north of Columbia on Creasy Springs Road, there is a house and workshop on the property, the workshop has been constructed in the front setback. The original zoning for this property is R-S. The subject tract includes parts of lot 1 and lot 2 of Woods Cliff Subdivision which was platted in 1977. The Woods Cliff subdivision plat indicates that there is a right-of-way width of 33 feet from the center of Creasy Springs Road and that there is a 25 foot building line adjacent to the right of way. The Assessor's records indicate that the house was built in 1978. The house is approximately 30 feet from the right of way.

The property owner applied for a building permit on June 20, 2013, noting on the application that the proposed shop would be 20 feet from the front property line rather than the required 25 feet. On June 21, 2013 a building inspector found that the building footing and piers had already been poured with concrete and were too close to the property line. Subsequently the planning staff contacted the property owner and advised him that the building could not be built as placed without obtaining a variance from the zoning Board of Adjustment, and that construction should stop until a variance had been obtained. Contact was made by telephone, e-mail and surface mail. A request was made for an electrical inspection at which time staff explained that no further inspections could be performed until the issue with the setback had been resolved. Pursuant to determining how far from the property line the building was the County Surveyor was requested to locate the building in relationship to the property line. The County Surveyor determined that the building actually encroaches into the Boone County public right of way by a distance ranging from 4.3 feet to 6.2 feet. The building has been completed and is assumed to be occupied. Additionally, the applicant has constructed a fence and placed a satellite dish on the public right of way. While not included in the submitted variance application, the shop building is situated in front of the existing residential structure on the property. This does not comply with Section 7.A.(5) "No accessory building may be erected in front of a main building unless the accessory building is attached to the main building by a common wall".

The requested variance is from Zoning Regulations Section 10.A. Yard Requirements. The minimum front setback in R-S is 25 feet.

Enclosed in the Board Members packets were the following:

Cover letter from Thomas M. Schneider that accompanied BOA application

Application for Board of Adjustment

6/20/13 building permit application

6/20/13 site plan accompanying building permit application prepared by applicant

6/21/13 Building inspection report noting footing and piers were already poured

6/25/13 email from Uriah Mach to Mr. Reynolds at eyecandycomo@yahoo.com

7/9/13 Letter from Uriah Mach

10/7/13 letter from County Counsel C.J. Dykhouse (referenced in Schneider letter)
2011 aerial photograph of subject tract showing house (from Boone County Assessor)
2015 aerial photograph of subject tract showing house and shop (from Boone County Assessor)
Copy of plat of Woods Cliff Subdivision
Site details prepared by Matthew Thomas, Boone County Surveyor
2013 photographs of subject building
2015 photographs of subject building

Present representing the request:

Tom Schneider, Attorney, 11 N Seventh St, Columbia
Seth Reynolds, 5146 Creasy Springs Rd, Columbia

Tom Schneider: Mr. Reynolds owns a 1.3 acre lot on Creasy Springs Road.

Mr. Schneider presented the following:

Exhibit 1: Copy of Final Plat of Woods-Cliff Subdivision. The building line is highlighted in pink and the right of way is highlighted in yellow.

Exhibit 2: Google Earth aerial dated 5/14/13 (Mr. Schneider stated the yellow is the right of way and the pink is the building line and the blue area is not in dispute)

Exhibit 3: Photo of the side of a building with deck

Exhibit 4: Photo of partial deck with backyard.

Tom Schneider: The 1800 square foot outbuilding is built on the only flat part of this lot. There is no other place to put it because the lot is on a cliff. The request is for a variance of the setback, it sounds like there are a couple more zoning allegations that we were not aware of so the applicants may be back again to address them. Tonight we are asking for a waiver of the setback line. The right of way issue really isn't in the Board's jurisdiction. This is really a classic variance case. Topography is something the property owner can't do anything about. The building was built on the only spot it could be built due to the terrain and there is no harm to the public because the encroachment is to the street and not toward a neighbor. Setbacks are really to protect neighbors. This encroachment into the building line is toward Creasy Springs Road, it is approximately 22 feet from the pavement and as you can see it is built on a cliff, there is a significant incline there. The pending lawsuit that the County has filed, the judge might or might not order that the structure be removed but we think that won't happen until Creasy Springs Road is widened which we won't think will occur in our lifetime. This is not a self imposed hardship it is a classic topographical hardship and we request the Board's approval for the setback violation.

Open to public hearing.

No one spoke in favor of the request.

Present, speaking in opposition:

Stan Shawver, Director, Resource Management, 801 E Walnut, Columbia
Matthew Thomas, County Surveyor, 801 E Walnut, Columbia

Stan Shawver: As Director of Resource Management, one of my responsibilities is to oversee the enforcement of the Boone County Zoning and Subdivision Regulations. In that regard, the staff is very concerned with how this request has come about. The basic request here is for a variance from the front setback regulations that require a structure to be at least 25 feet back from the front property line and six feet from the side property line on properties located in the R-S zoning district. The Board has the power to grant such a variance.

However, in the case before you, the structure crosses the property line and encroaches into the publicly dedicated right-of-way for Creasy Springs Road. The staff has been unable to find any authority in the zoning regulations or the Missouri State Statutes that would allow the Board of Adjustment to grant permission for a structure to encroach into the right-of-way. Without such authority, how can the Board grant the setback variance request that is being requested?

The staff is also concerned that this request has come to the Board over two years from when the issue first was identified and Mr. Reynolds notified of it and directed to stop. Staff concern is that should the variance be granted, it will appear to set a precedent that a property owner just postpones any attempt at compliance.

Present this evening is Mr. Ron Sweet, Assistant Boone County Legal Counsel. Mr. Sweet is prepared to answer questions about the Board's legal authority.

Also present is Mr. Matthew Thomas, the Boone County Surveyor, and a Professional Licensed Surveyor. Mr. Thomas is prepared to answer any questions about how he located the right-of-way for Creasy Springs Road and the subject structure.

Member Bowne: Mr. Thomas was there to measure the distance from the road and property line.

Matt Thomas: That is correct.

Member Bowne: How far is the closest point of the building to the center of the road?

Matt Thomas: I don't know.

Member Bowne: How far is it from the closest point of the building to the edge of the road?

Matt Thomas: I don't know. The pavement and how it lays was not a concern, what was a concern was locating property monuments that would show me where the right of way was located according to the plat

Chairperson Thomas: And it is over four feet into the right of way?

Matt Thomas: That is correct.

Member Bowne: Can you tell me how far the building is from the house?

Matt Thomas: I don't know.

Member Bowne: Stan, you said two years on this?

Stan Shawver: Yes. June 20, 2013 was the day the building permit was applied for. An inspection was requested on June 21, 2013 the building inspector went out and noted that the concrete had already been poured in the footings, it was the inspectors opinion that it was too close to the property line. The road inspector looked at it as well and he also noted it was too close to the right of way. Mr. Mach made contact with Mr. Reynolds to tell him to stop construction. There is an email which Mr. Mach reviewed their phone conversation of June 21, 2013 and he mentioned that he would need a setback variance and also noted that the building was in front of the residence and informed him that he would need a variance for that as well.

Member Bowne: All of that took place in June 2013. When was the variance request submitted?

Stan Shawver: October 23, 2015.

Chairperson Thomas: My question was whether the Board had any ability to grant a variance in the right of way.

Ron Sweet: No you don't have the authority to grant a variance in the right of way.

Closed to public hearing.

Tom Schneider: Mr. Reynolds informed me that the edge of the pavement is 22 feet from the outbuilding.

Chairperson Thomas: When was construction started on the building?

Tom Schneider: In 2013.

Chairperson Thomas: When was the building completed?

Seth Reynolds: It took a lot of earth work and I built a pad and a couple years later...it took a long time to get it all.

Chairperson Thomas: Did you receive all of the communications from the staff members?

Seth Reynolds: At the time I didn't think I needed a permit for it.

Member Bowne: But you came in and applied for a permit.

Seth Reynolds: Yes, I needed to move an electric line, the Amish were doing it and they didn't want to work close to the electric line so I had to call Boone County and when they came out they said I needed a permit for them to move the power line. I said, I don't think I do. They said you do need one for at least that so that is when I came in and talked to Planning and Zoning.

Member Bowne: How did you move the power line?

Seth Reynolds: They came out and moved it.

Member Bowne: Boone Electric did?

Seth Reynolds: Yes.

Tom Schneider: The variance request was filed last October following the County filing suit involving three issues. One of the issues is the setback issue, another is the right of way encroachment which I contend is not before the Board and is not within your jurisdiction and nothing the Board does or doesn't do will affect the State's rights.

Chairperson Thomas: The fact is Mr. Reynolds continued construction after being asked to stop construction and apply for a variance. He never did. He waited until after construction to apply for the variance.

Seth Reynolds: It was pretty much done by the time they came out.

Chairperson Thomas: There was a footing inspection so it wasn't done at that point.

Seth Reynolds: I don't know if it was done or not, I don't know when they came out.

Chairperson Thomas: We have a copy of the inspection report stating that the footing was already poured. So they were out there and saw before the construction was completed that you had an issue and staff notified you.

Seth Reynolds: By the time they notified the thing was already predominately built. The only thing that was holding back any of it is that the Amish were waiting on the power line to be moved because they had another 10 foot or so of steel to put up. Basically, by the time I got the letter and then I can't communicate with the Amish very well, they don't have phones.

Chairperson Thomas: You don't live on the property?

Seth Reynolds: I live on the property but they just show up and they just work when they show up.

Tom Schneider: I don't recall that he was told in June 2013 to get a variance.

Chairperson Thomas: I think that is in the June 25, 2013 communication "If you wish to consider construction of this building you need to take 5 feet off the structure and apply to the Board of Adjustment for two variances" Then he very clearly tells you what to apply for.

Tom Schneider: I don't believe I ever saw that.

Chairperson Thomas: That was part of the application.

Tom Schneider: That is a small issue. Going back to the right of way it would seem to be bothering the Commission. There are two overlays here, you have the right of way and you have the setback on top of that.

Chairperson Thomas: That is correct. We have the setback issue and we have the right of way issue. The setback issue is what the Board will address, which is about 50 % of the building if not more.

Tom Schneider: They are independent issues, you can't do anything with respect to the right of way and we are not asking the Board to do anything with the right of way. If the Board grants a variance for the setback you are not somehow usurping their authority and taking away their ability to do what they want to do.

Member Lightfoot: I think we are really clear on that. I think the Board's issue is that the applicant was told several times to stop with the building and was told very specifically what to come and apply for and that was ignored. The Board is very clear what their rights are and what they should be voting on. However the big problem is that we have a stack of things that were sent to you to stop building and you continued.

Seth Reynolds: The building was already completed by then.

Member Lightfoot: You just stated that it wasn't completed for a couple of years.

Seth Reynolds: This has been a long process.

Chairperson Thomas: Even if it was finished in July 2013 you should have made your application in July 2013. You should have made your application immediately.

Seth Reynolds: I just didn't know I needed one because I was out in the county.

Chairperson Thomas: Ignorance is not an excuse. You were contacted by the staff and they told you exactly what you needed to do.

Member Bowne: Can I see a topography map?

Bill Florea: Could we get verification of the date the building was completed?

Seth Reynolds: It is not really complete now. It has the shell up but is not finished.

Bill Florea: I must have misunderstood because I thought the applicant said that the building was complete.

Tom Schneider: Are you talking about the interior?

Seth Reynolds: Yes, that is not done, all that is done is basically the shell.

Tom Schneider: I think the staff is asking when it was water-tight.

Seth Reynolds: I think when I came in to apply for the original permit.

Bill Florea: What date was that?

Seth Reynolds: I don't know for sure.

Member Bowne: According to the topography map it looks to be the most steep where the house is sitting?

Uriah Mach: It is pretty steep where the house is sitting it looks more steep off to the west but the house area looks flat.

Thad Yonke: One of the things staff would like to point out is if they are required to remove part of the building that encroaches into the right of way if the Board grants the variance they get to rebuild

the building back up because when you have to remove part of the structure you have to rebuild part of the structure that has already been built out of compliance. It isn't just a matter of does it get left it is a matter of being able to legitimize the infraction.

Member Bowne: I don't like the building that close to the road, Creasy Springs is a dangerous road. Mr. Schneider didn't seem to think that was an issue but it is an issue to me. There is a reason we have setbacks from the road and that is one of them because if a car goes off the road they don't run into a building or a fence.

Member Lightfoot: When did you install the satellite dish?

Seth Reynolds: That has been there for years; Directv installed it.

Member Lightfoot: I don't see it in the pictures.

Chairperson Thomas: The building is approximately 44 by 41 feet?

Seth Reynolds: I thought it was a 40 by 40 or 40 by 42.

Tom Schneider: The total is 1804 square feet so it would have to be larger than that.

Member Bowne: This isn't a Board that usually looks favorably on someone who rather than ask for permission but asks for forgiveness later. That is why we have the permitting process and that is why you ask for permission and you are given the option of requesting a variance before you invest any money in the structure. Staff documented very well that they told you there were problems before you had invested a lot of money. You live onsite, you knew when the Amish were there working, I don't know how the Amish got there to work or when they knew to come since you couldn't contact them.

Seth Reynolds: Well they just show up when they show up.

Member Bowne: And how did they get there?

Seth Reynolds: A car or van, I don't know.

Member Bowne: How do they know when you are ready for them to come?

Seth Reynolds: I tell them and they show up whenever they have time between their crops or whatever else.

Member Bowne: Then it didn't happen all that quick.

Seth Reynolds: No, what I am saying is the thing was already pretty much done by the time that I came in to do the permit.

Member Bowne: Not by the documentation from staff. Footings were poured the day after you signed the permit.

Seth Reynolds: No, the footings were already poured.

Member Bowne: The footings were poured and that is all that was there the day after you got the permit.

Seth Reynolds: No.

Chairperson Thomas: We have a permit request of June 20, 2013 and a report from the inspector of June 21, 2013 footings as is, already poured.

Seth Reynolds: It may say footings as is but the structure was already up at that time.

Thad Yonke: So the applicant is stating construction was already started prior to making an application.

Seth Reynolds: Exactly.

Thad Yonke: So the applicant is admitting to another violation.

Seth Reynolds: I just didn't know that I needed a permit for it because I was out in the county. I guess the Amish didn't know because they aren't from this county. The only reason I did it at all was because I knew I had to move a power line and was told I had to have a permit.

Thad Yonke: The person who told you that you had to have a permit to move a power pole?

Seth Reynolds: Yes, the guys at Boone Electric.

Thad Yonke: They would have had you fill out paperwork with them to move the power pole but then they told you that you needed to come talk to us?

Seth Reynolds: Because they said they had to base their permit on your permit which I don't understand.

Thad Yonke: So then the applicant came to apply for the building permit with the County.

Seth Reynolds: Yes.

Thad Yonke: You were informed about the standard procedures about the building permit and requiring inspections that we tell everybody about when they apply for a permit application. You then requested an inspection for something because we didn't send a building inspector out unless someone requested the inspection.

Seth Reynolds: I don't know how it works because I have never done this before.

Thad Yonke: That would be when we would have sent the building inspector out who would have noticed that the work had been done before it was checked for setbacks. At that point is when contact was made before any of the structure was up.

Seth Reynolds: No, the structure was already up. The Amish had gotten along so far and there was this power line, at first we thought we were going to be able to clear it and it wouldn't be a problem but then the guy came over and said he was worried about the power line because we are starting to

get close to it so he asked me to call and have it moved for safety sake. So that was when I called the County, the main structure, most of it was already done when I applied for the permit.

Thad Yonke: Not understanding at that point that you are not in compliance what would make you think you should keep building when you are told at that point that you have problems with the structure.

Seth Reynolds: By the time that someone actually came to look at it and I work a lot during the day and the Amish show up out of the blue so basically by the time, and they didn't have much to do like putting steel over the existing structure. It wasn't like I started fresh at that point, the thing was pretty much done by the time I called Boone Electric out.

Member Bowne made and Member Thomas seconded a motion to **deny** the 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:

Member Thomas	Yes	Member Bowne	Yes
Member Lightfoot	Yes	Member Stephenson	Yes

Motion to deny the request carries unanimously

2. Case 1996-012

Review permit issued to Bryan and Melissa Pemberton for a mobile home as a second dwelling on 9.48 acres located at 14871 N Oak Grove School Rd., Harrisburg (home has been removed - Board should take action).

Planner, Bill Florea gave the following staff report:

The tract is 9.48 acres with parcel number 06-200-09-00-006.00. The property is zoned A-2 as is the adjacent zoning. The property is located approximately 3 miles east of Harrisburg, just north of Highway 124. There is an existing house on this property. The mobile home previously approved for this request has been removed from the property. The mobile home has been removed from the property and the variance is no longer needed. The Board should take action to deny renewal of this variance. This permit was first granted in September 1996. The last review was conducted before the Board in June 2013.

Member Thomas made and Member Lightfoot seconded a motion to **deny** renewal of the permit issued to Bryan and Melissa Pemberton for a mobile home as a second dwelling on 9.48 acres located at 14871 N Oak Grove School Rd., Harrisburg:

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

Motion to deny the renewal carries unanimously

3. Certificate of Decision - Case Number 2016-001 request by James & Vicki Brocksmith

The Certificate of Decision was accepted and signed by the Chairperson.

NEW BUSINESS

None

ADJOURN

Meeting adjourned at 8:16 p.m.

Respectfully Submitted,

Paula L Evans
Secretary

Minutes approved this 26th day of May, 2016