

**BOONE COUNTY BOARD OF ADJUSTMENT**

**BOONE COUNTY GOVERNMENT CENTER**

**801 E. WALNUT ST., COLUMBIA, MO.**

**Thursday, May 25, 2017**

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

Roll call was taken:

Present: Frank Thomas  
Rhonda Lightfoot  
Cindy Bowne  
Dennis Stephenson  
Paul Zullo

Absent: None

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

Chairperson Thomas read the following procedural statement:

This Board is appointed by the Boone County Commission to consider specific application of the zoning and subdivision regulations. The Board is empowered to enter rulings that may give relief to a property owner from the specific application of the Zoning and Subdivision regulations. Generally, variances can only be granted in situations where by reason of shape, topography or other extraordinary or exceptional situation or condition of a specific ordinance would result in peculiar and exceptional difficulties to or exceptional and demonstrable undue hardship upon the owner of the property as an unreasonable deprivation of use as relating to the property. A variance from the strict application of this ordinance can be granted provided the relief requested will not substantially impair the intent, purpose and integrity of the zoning regulations.

Notice of this meeting has been published in accordance with our by-laws for the proper number of days. All decisions of the Board are based on the zoning or subdivision regulations for Boone County, Missouri, and they are hereby made a part of the record of this meeting.

This Board is comprised of five members, with three members constituting a quorum. An applicant must receive at least three votes in order to receive the relief that they have requested from the Board.

The following procedure will be followed: The agenda item will be announced, followed by a report from the Resource Management Department staff. At that time, the applicant or the applicant's representative may make a presentation to the commission. The Board may request additional information at that time, or later following the public hearing.

After the applicant's presentation, the floor will be opened for a public hearing to allow anyone wishing to speak in support of the request. Next, the floor will be given over to those who may be opposed to the request. Direct all comments or questions to the Board and please restrict your comments to the matter under discussion. Please give your name and mailing address when you address the Board and sign the sheet on the table after you testify. The public hearing will then be closed and no further comments will be permitted from the audience or the applicant unless requested by the Board. The Board will then discuss the

matter and may ask questions of anyone present during the discussion. Also, we ask that you turn off your cell phones.

Any materials that are presented to the Board, such as photographs, written statements or other materials will become a part of the record for these proceedings. If you would like to recover original material, please see the staff during regular business hours after they have had an opportunity to make a copy of your submission.

Minutes of the March 23, 2017 meeting were approved by acclamation.

## **REQUEST**

### 1. Case Number 2017-004

Request by Timothy and Jan Jeffries for a lot smaller than 5.0 acres on a private road located at 8430 S Forest Creek Dr., Columbia. (**Subdivision Regulations Chapter 1.6**)

Bill Florea gave the following staff report:

This site is located just south of Pierpont, approximately 3.5 miles south of Columbia. There is a single family dwelling on the property and the lot is nonconforming due to one provision of the subdivision regulations. The original zoning for this area is A-2. In 1973, Serendipity subdivision was platted, but never developed. In 1995 a survey was recorded that created several lots over the original Serendipity subdivision. A private road was built to access the interior lots. The subject lot was one of those lots. The house on the subject tract was built in 2004. The requested variance is from subdivision regulations Chapter 1.6 which states that a private road may only provide access to lots 5 acres or larger. Staff notified 28 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 subject property is part of a survey development created in 1995 prior to the current subdivision regulations. At the time of survey each lot consisted of 5 acres or more. After the survey a small portion of the subject tract was transferred to an adjoining property owner. That transfer did not comply with the then in effect subdivision regulations. The remaining portion of the tract was of legal size in accordance with the zoning regulations, but did not comply with the subdivision regulations which restricts tract size to 5 acres or larger when accessed by a private road. The subject tract is 3.452 acres in size. Section 1.6.3 of the Subdivision Regulations states ” Minor Plat – any subdivision consisting of five or fewer lots, any one of which is less than ten (10) acres, where each lot has direct access to and frontage upon an existing public road, or, a subdivision plat consisting of any number of lots, each being

five (5) acres or more, where each lot has direct access to and frontage upon a public road, or has a common private driveway situated on and created for the exclusive use of no more than four (4) lots providing ingress and egress to a public road.” There are 11 lots that access the private road known as Forest Creek Drive. All the other lots are 5.0 acres or larger.

- a) The applicant will incur unnecessary hardship if the variance is not granted. This is a unique situation as the lot complies with the minimum lot size for the zoning district, but does not comply with the requirement to have at least 5 acres when using a private roadway. This situation was created prior to the current owners purchasing the lot.
- b) Granting this variance will not endanger the health, safety, or welfare of the public.
- c) Granting this variance will not thwart or circumvent the general intent of the regulations.

Staff recommends that this variance be granted.

Present representing the request:

Marjorie Lewis, Attorney, 601 E Broadway, Ste 203, Columbia  
Tim Jeffries, 8430 Forest Creek Dr, Columbia

Marjorie Lewis: Mr. Jeffries is one of the trustees. The applicants want to continue to use the property and house as described and be able to sell it if they wish.

The applicants presented exhibits including a copy of the application, a letter to the Board, deeds, survey, portions of the Zoning and Subdivision Regulations, building permit, building permit application, plot plan, waste water permit, aerial photograph, State Statutes regarding the Board of Adjustment, list of property owners within 1000 feet of the subject tract, staff report, and emails from several neighboring property owners to Tim Jeffries.

Marjorie Lewis: The tract was originally a conforming tract but due to conveyances it became a non-confirming tract. The applicants purchased the tract with the house on it and by that time it had decreased in size by a transfer of a portion of the tract to another party. The applicants believe that the requirements to obtain a variance have been met.

Tim Jeffries: I purchased the property in 2007 from a developer, he didn't realize the property wasn't in conformance with the regulations. My neighbor was getting ready to sell her house and that is when we found out that we had a non-compliance issue.

Open to public hearing.

No one spoke in favor or opposition to the request:

Closed to public hearing.

Member Thomas: This issue was created a few transfers back and there was a survey that wasn't done properly?

Bill Florea: The surveys were done properly. The original owner was under a trust and the trustee conveyed some of the property to one of the surviving beneficiaries of the trust and created the division. The remaining property was sold to a developer and was then sold to the Jeffries.

Member Bowne: Where did the 1.78 acres go?

Tim Jeffries: My neighbor, when she was selling the property to John Page, she has an attorney cousin who suggested that she go ahead and take off 1.75 acres, part from my tract and part from another tract so she would have a 10 acre lot.

Member Bowne: So the 1.78 acres didn't all come from the applicants tract.

Tim Jeffries: Part of it did and part of it came off another tract.

Member Bowne: There are many acreages listed for tract 18. If we grant this variance what lot size are we granting the variance for?

Bill Florea: 3.452 acres.

Member Bowne: The subdivision regulations require that for a private drive you can't have more than four lots and there are eleven lots.

Bill Florea: I would have to go through the entire history of all of those lots and see what was created and when. Many of those lots were created prior to 1973 and definitely prior to 1995 when that regulation came in to effect. Those are not at issue tonight and I don't think we anticipate seeing any variance requests from any of them.

Member Bowne: The applicant said their neighbor was selling her lot and encountered a problem?

Tim Jeffries: The neighbor to the east is the one that took the additional 1.78 acres and I called Resource Management to help her and they said when they did that they didn't get everything filed properly and that is how the issue came about.

Member Bowne: So it is not that she had a problem with her lot but that is when the applicant found his issue.

Tim Jeffries: That is correct.

Marjorie Lewis: Exhibit A has a legal description that was part of the confusion. It says "A tract of land containing 5.25 acres, more or less" and at the end it adds "excepting therefrom 1.798 acres, more or less".

Member Bowne: It is listed as coming from more than just Mr. Jeffries tract but when you do the math it all came from his tract.

Marjorie Lewis: I think the 1.798 acres came from Mr. Jeffries tract and another portion came from a different tract.

Member Bowne: What was the intent of to "not thwart the intent of the subdivision regulations", what was the intent of the subdivision regulations that these lots had to be five acres and no more than four on them on the road?

Bill Florea: I wasn't here when the regulations were written so I can't tell you what in the minds of the people who wrote it?

Member Bowne: Then how do we know that we aren't thwarting the intent of the regulations?

Bill Florea: That is each Board members decision.

Member Bowne: What type of road is this that serves these tracts?

Tim Jeffries: Two lane concrete.

Member Bowne: Does the property meet all the other requirements as far as setbacks?

Bill Florea: Yes.

Member Bowne made and Member Thomas seconded a motion to **approve** the request by Timothy and Jan Jeffries for a lot smaller than 5.0 acres on a private road located at 8430 S Forest Creek Dr., Columbia:

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

Motion to approve the request carries unanimously

2. Case Number 2017-005

Request by Michael W. Rice for a variance from the front setback on .88 acres for an existing structure and proposed addition located at 5220 E Dee Woods Rd., Ashland. (Zoning Regulations Section 10.A)

Bill Florea gave the following staff report:

This site is located ½ mile south of Ashland, there is a single family dwelling on the property. The existing house is located inside the front setback, the applicant would like to add on to the house. The original zoning for this tract is A-2 and was created by survey in March 1973. The survey showed a right of way for the road as 40 feet. The existing house was built in 1976. In 2000 easements were granted to increase the right of way to 50 feet total. The requested variance is from Zoning Regulations Section 10.A which requires that structures in the A-1 and A-2 zoning districts provide at least a 50 foot setback from the front and rear property lines, and 6 feet from the side property line. Staff notified 18 property owners about this request.

Present:

Jeff Ward, 18225 Old Hwy 63 S, Ashland

Jeff Ward: The property owner is on a family vacation and asked me to represent his request.

Member Thomas: Is it okay for Mr. Ward to present the request?

Bill Florea: Does Mr. Ward have a letter from the property owner authorizing him to represent the request?

Jeff Ward: I don't have a letter.

Uriah Mach: I spoke with Mr. Rice yesterday and informed him we would need a letter or email from him authorizing Mr. Ward to represent the request; staff didn't receive one.

Member Thomas: We can't proceed without written authorization from the property owner.

The request will be heard at the June 22, 2017 meeting.

3. Case Number 2017-006

Request by GP Property Investments for a variance to allow an existing single family dwelling to remain within the front setback located at 8661 S. Rangeline Rd, Columbia. (Zoning Regulations Section 10.A)

Bill Florea gave the following staff report:

This site is located 5 miles northeast of Ashland, there is a single family dwelling and accessory structure on the property. The existing house is located inside the front setback. The original zoning for this area is A-1. This 2 acre tract is Tract 2 of a 3 lot survey filed in May 1973 prior to the adoption of zoning in Boone County. The land immediately adjacent to the site is zoned A-1. Approximately 300 feet north of the subject tract is a small area that was changed to A-2 zoning in 1975. The requested variance is from Zoning Regulations Section 10.A which requires that structures in the A-1 and A-2 zoning districts provide at least a 50 foot setback from the front and rear property lines, and 6 feet from the side property line. Staff notified 11 property owners about this request.

David Butcher, Crockett Engineering, 1000 W Nifong, Building 1, Columbia

Mr. Butcher presented a copy of the subdivision plat and an aerial photo of the area.

David Butcher: The aerial photo shows the existing conditions of the property. The property to the north is zoned A-2 the two lots to the north were subdivided last year. There are two existing 2-acre tracts to the south. The goal is to split the middle parcel with the two barns and the north building will go to the north property and the building to the south will go to the south property. The applicants have a pending rezoning request to rezone the property to A-2. The property to the south has an existing house within the front setback.

Member Bowne: How far does the house encroach in the setback?

David Butcher: It is around 4 feet. The foundation of the house is only 1.5 feet in the setback.

Open to public hearing.

No one spoke in favor or opposition.

Closed to public hearing.

Member Thomas: How old is the house?

David Butcher: It was building in the early 1970's.

Member Bowne: The two acre tract with the two sheds, that is already a two acre tract?

David Butcher: Correct.

Member Bowne: How do we have a two acre tract with two sheds on it but no house?

David Butcher: It was created prior to the regulations.

Member Bowne: What utilities run along there?

David Butcher: There is electric overhead and water on the east side of the road.

Member Bowne: What type of sewer system?

David Butcher: It has onsite systems.

Member Bowne: What is the minimum lot size in A-2 zoning?

Bill Florea: 2.5 acres.

Member Bowne: How are we doing 2 acre tracts? The applicant wants to divide the middle tract and make 2.5 acre tracts?

David Butcher: Yes. I have a pending rezoning request; it was recommended approval by the Planning and Zoning Commission and it goes before the County Commission later this month. If I am denied that request the applicants will come back to the Board for their help on that regard.

Member Stephenson: The only thing we are looking at tonight is the setback issue.

Member Bowne: I thought the applicant said it didn't have to conform to a setback because of when the lot was created.

Bill Florea: There is a 50 foot setback however the structure was in place prior to zoning so it is non-conforming. In order for the applicants to subdivide the property they will have to obtain a variance from the setback.

David Butcher: Right now the property line goes to the centerline of the road and there a statutory right of way that exists over Rangleline Road. Now that the applicant is granting right of way to the county we have a setback of 50 feet and the building is encroaching in that setback.

Member Bowne: The applicants were here last month?

David Butcher: Yes, the applicants thought they were also requesting a variance for lot size requirement but there was a misunderstanding. The applicants withdrew that request because they found out they needed to rezone the property and the setback was the only thing the applicants could ask for on this.

Member Bowne: The minutes from the last meeting the applicants didn't want an approval with an "as is where is" condition. Has that changed?

David Butcher: Yes. My understanding is that the "as is, where is" condition does not prevent the applicants from improving the house or add on to the house beyond the building line. As long as that is the case the applicants are fine with that condition.

Uriah Mach: For clarification the Board’s typical as is, where is condition states “the existing structure maintain the same location, footprint, and square footage”.

Member Lightfoot made and Member Stephenson seconded a motion to **approve** the request by GP Property Investments for a variance to allow an existing single family dwelling to remain within the front setback located at 8661 S. Rangeline Rd, Columbia. (Zoning Regulations Section 10.A) **with the following condition:**

- The existing structure maintain the same front yard, if the existing structure has been damaged by any cause equal or more than 75 % 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. No further encroachment in to the setback can be made by any future additions.

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

Motion to approve the request carries unanimously

## **OLD BUSINESS**

- Certificate of Decision – Case Number 2017-001 Request by C and Do Properties
- Certificate of Decision – Case Number 2017-002 Request by Drake Enochs

The certificate of decision was accepted and signed by the Chairperson.

Chairperson Thomas reminded the Members that they are not supposed to visit the properties of these cases. It is the applicant’s responsibility to provide evidence to their case through testimony and presented documentation. That is what the Members are basing their decisions on, the evidence before them.

Bill Florea added that when Members visit properties it is like the Judge being an investigator and collecting his own information in the case

## **NEW BUSINESS**

None

## **ADJOURN**

Meeting adjourned at 7:55 p.m.

Respectfully Submitted,



Paula L Evans  
Secretary

Minutes approved this 22<sup>nd</sup> day of June, 2017