

BOONE COUNTY BOARD OF ADJUSTMENT

BOONE COUNTY GOVERNMENT CENTER

801 E. WALNUT ST., COLUMBIA, MO.

Thursday, February 22, 2018

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 Proctor
Paul Zullo

Absent: Dennis Stephenson
Vacant Seat

Staff: Thad Yonke, Senior Planner Uriah Mach, Planner
Bill Florea, Senior 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 December 28, 2017 and January 25, 2018 meetings were approved by acclamation.

REQUEST

1. Case Number 2018-002

Request by James and Tammy Heuer for a variance from the minimum perimeter setback in a planned development or, from the side and rear setbacks if a planned rezoning is not pursued, for an existing building on 1.0 acres located at 15471 N. Old Hwy 63, Sturgeon (Zoning Regulations 6.8.1 and/or 10.A).

Planner, Thad Yonke gave the following staff report:

This site is just north of State Highway 124 to Harrisburg on Old Highway 63. It is 8.5 miles north of Columbia and 7 miles south of Sturgeon, there is a restaurant/store on the site. The structure does not meet setbacks under the current zoning. The applicant may seek C-GP zoning which requires a minimum 20 foot setback around the perimeter of a property. The existing structure is too close to the property line at several points. The original zoning for this site is R-S. There has been a store on the property since before zoning came into effect. In 1999 the Board of Adjustment issued a Certificate of Occupancy designating the site as having C-N (Neighborhood Commercial) zoning equivalent following a public hearing. Later that same year the owner requested that the property be rezoned to C-GP (Planned Commercial), however a review plan and final development plan were never submitted or approved. The requested variance is from Zoning Regulations Section 6.8.1 which requires a 20 foot setback around the boundaries of a C-GP site. Section 10.A requires a minimum six foot side setback in the R-S and C-N/C-G districts and a 25 foot rear setback in the R-S and 20 foot rear setback in the C-N/C-G districts. Staff notified 15 property owners.

Member Proctor stated she has personal knowledge of this request but it will not affect her decision or her duties of this Board.

Present representing the request:

Robert Hollis, Attorney, 1103 E Broadway, Columbia

Stephen Lin, Engineer, Allstate Consultants, 3312 LeMone Industrial Blvd, Columbia

The applicants presented a power point presentation.

Robert Hollis: Heuer's Country Store and Café is a business that is located on the property. The applicant's plan is to replat the property because the sanitary sewer system which is currently a lagoon needs to be replaced. In order for it to be replaced the system that will be in its place will be over an area that is currently two lots. To replat this requires a variance because the existing structure is too close to the property lines. This is being driven by the applicants bringing their property into compliance with the sewer system. In order to make those improvements we have to replat. This is the first step in the process. The applicants intend to request a rezoning, in 1999 it gets a little fuzzy but we think the south half was zoned C-

N and the north half was zoned R-S. There was a request for the entire property to be C-GP and the request was granted and there is a requirement that a plan be approved within 24 months from the approval date but that never occurred. One could say that it is still C-GP or part C-N and R-S. The applicants wish to remove a lot line separating the two lots. The corner of the structure is too close to the property line. The west portion of the property is dedicated for the sanitary sewer system and it will take up an area of both lots. The plans for the sewer system are complete and approved but can't be implemented until the replat process is done. The lagoon that must be removed will be replaced with a new sanitary sewer system. The specific request can be simplified if the Board wants to grant a variance from whatever setbacks apply then we don't have to worry about being more specific. If the Board wishes to be more specific the applicants are requesting a variance from what this property may end up being zoned. We don't know at this point. The reason the applicants requested a variance from two zoning sections was because the zoning districts require different setbacks; one is 20 feet and one is six feet. The applicants would like the Board to grant a variance that applies in either instance. A variance from Subdivision Regulations, Appendix B, Section 1.8.2 was also requested which may be overkill but arguably you could read that section of regulations to say that you aren't in compliance with the subdivision regulations unless you are in compliance with the zoning regulations.

The applicants presented the following evidence:

- Copy of the Zoning Ordinance for Boone County, Missouri
- Copy of the Boone County, Missouri Land Use Regulations, Chapter 1 and Appendix B, Subdivision Regulations
- Copy of the notice of application and attachments
- Copy of the power point presentation

Robert Hollis: The standards for decision are: Standard 1 – Setback requirements result in exceptional difficulties and undue hardship on the applicants and would deprive them of their use of the property. The variance would provide necessary relief without any detriment to the public good and without impairing the intent, purpose, or integrity of the zone plan as embodied in the zoning regulations and zoning map. With regard to the exceptional difficulties and undue hardship. Without the variance there can be no replat and without a replat there can be no sanitary sewer improvements and Heuer's will not be able to operate at their current location. This variance will improve the public good because the environment is protected and a viable business is permitted to remain and serve the public. The environment is protected because you have a lagoon that is no longer acceptable being replaced by an acceptable sanitary sewer service. Section 1 of the zoning regulations, Title, Purpose, and Intent – the purpose is to promote the health, safety, morals, comfort, or general welfare, and conserving the values of property. This variance promotes health and general welfare and conserves property value because it permits a property to continue to be used as it has been. It also creates a more favorable situation with respect to the environment. If the Board chooses to grant a variance broad enough to apply to the subdivision regulations this variance is not being sought primarily to avoid financial expense in complying. The primary reason is to permit approvals required for the desired sanitary sewer improvements. The applicants are requesting a variance from the setback requirements that apply to this property under the zoning regulations and, to the extent that the Board is willing, a variance that would be that broad. If the Board would like to be more narrow to apply to the sections mentioned under C-N or C-GP, whichever the case may be.

Open to public hearing.

No one spoke in favor or opposition to the request.

Closed to public hearing.

Chairperson Thomas: What is the property zoned now?

Thad Yonke: That is arguable. In staff's opinion the property is zoned R-S. In 1999 the Board of Adjustment stated it had the equivalency of C-N for purposes of "grandfathering". That was a relatively moot point then because the applicants applied to rezone to C-GP in order to legitimize it. The County Commission approved the rezoning request however in order for the C-GP zoning to go in to affect a plan had to be filed and it never was. The property has had a lot of decisions made on it but technically it is zoned R-S.

Member Proctor: What is the setback in R-S?

Thad Yonke: Six feet from the side and 25 from the rear. C-N has a 20 foot rear setback.

Chairperson Thomas: How much in the setback is the property?

Stephen Lin: Approximately one foot from the property line at the corner of the building.

Member Proctor: Does the building meet the other setbacks?

Thad Yonke: As far as we can tell. The front is state right of way so it is hard to tell.

Chairperson Thomas: How old is the building and how many times has it been added on to?

Robert Hollis: I don't know that it has been added on to. It was built in approximately 1939.

Member Proctor: When did the applicants purchase the property?

Robert Hollis: 1999.

Member Zullo: If we put the condition of as is where is on this variance when the property changes hands the variance is no longer applicable?

Thad Yonke: The variance is tied to the land, not the owner. The way the Board has worded their as is where is condition if the building is destroyed the building has to be built in compliance with the setbacks. If the applicants don't get the variance, the sewer system is the issue so the property would likely not be able to change hands even if they wanted to sell it because no one is going to purchase the property if they can't have a sewer system. Anyone else will run in to the same problem.

Chairperson Thomas: We can grant a variance that is ambiguous of what the zoning is right now? I am reluctant to do something like that because we don't know what is going to happen in the future.

Thad Yonke: Is Chairperson Thomas asking what specificity you need in granting the variance?

Chairperson Thomas: Yes.

Thad Yonke: From the Planning Department's point of view it would need a variance if it is only one foot off it needs a five foot variance from the side yard setback and a 24 foot variance from the rear setback. That would comply with being one foot off the property line in the R-S zoning district. As long as you clarify that as existing conditions that is fine but if it gets rezoned to the C-GP or to the C-N that you would intend for those variances to correspondingly for what it is now. As long as the Board specifies what it is granting.

Robert Hollis: You can go that route but if you are going to say as is where is then you can say as is where is with respect to the zoning districts R-S, C-N, and C-GP and say that they are not in violation as is where is with respect to those three zoning districts.

Bill Florea: The Board could grant a variance as requested to allow the building to be within approximately one foot of the property line. You don't have to specify that it is a five foot variance if it is one zoning. Let it remain where it is.

Robert Hollis: We can't just say under R-S because it could get rezoned to C-GP.

Bill Florea: It doesn't matter, the zoning change doesn't negate a variance.

Robert Hollis: In my opinion it depends on how it is worded. If it is a variance that only applies to an R-S zoning district I wouldn't be comfortable with that; if we could say all three zoning districts I would be comfortable with it.

Member Thomas made and Member Proctor seconded a motion to allow the building to be within approximately one foot of the property line with the current and potential zoning for James and Tammy Heuer for an existing building on 1.0 acres located at 15471 N. Old Hwy 63, Sturgeon with the following condition:

- 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 Thomas	Yes	Member Zullo	Yes
Member Proctor	Yes		

Motion to approve the request carries unanimously

(Note: motion was ambiguous; will clarify at the next meeting)

OLD BUSINESS

Certificate of Decision

- a. 2018-001 Waters

Chairperson Thomas accepted and signed the certificate of decision.

NEW BUSINESS

None

ADJOURN

Meeting adjourned at 7:35 p.m.

Respectfully Submitted,

Paula L Evans
Secretary

Minutes approved this 26th day of April, 2018